SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 492.

FEDERAL TRADE COMMISSION, PETITIONER,

VS.

ANDERSON GRATZ AND BENJAMIN GRATZ, COPARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF WARREN, JONES & GRATZ, ET AL.

ON [redacted] WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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1 In the United States Circuit Court of Appeals, for the Second Circuit.

FEDERAL TRADE COMMISSION
vs.
ANDERSON GRATZ AND BENJAMIN GRATZ, COPARTNERS doing business under the firm name and style of Warren, Jones & Gratz, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer, respondents.

Petition of Warren, Jones & Gratz, by Anderson Gratz, for an order for the review of the findings and order of the Federal Trade Commission, and for an order setting them aside.

THOMAS F. MAGNER,
Attorney for Petitioner,
32 Court Street, Brooklyn, N. Y.

2 In the United States Circuit Court of Appeals, for the Second Circuit.

FEDERAL TRADE COMMISSION
vs.
ANDERSON GRATZ AND BENJAMIN GRATZ, COPARTNERS doing business under the firm name and style of Warren, Jones & Gratz, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer, respondents.

The petition of Anderson Gratz respectfully shows to this court:

I. That your petitioner is a resident of the Borough of Brooklyn, city of New York, and is a member of the firm of Warren, Jones & Gratz, who have offices in Brooklyn, New York City, and St. Louis, Missouri. That your petitioner and his brother, Benjamin Gratz, are the sole members of said firm. That William H. Fitzhugh and Alexander Fitzhugh are partners, doing business as general merchants at Vicksburg, Mississippi, under the firm name of P. P.
3 Williams & Co., and Charles O. Elmer, is a broker engaged in business at New Orleans, Louisiana. That Warren, Jones & Gratz are commission merchants and sell on commission steel ties manufactured by the Carnegie Steel Company, Pittsburg, Pa., used to bind the cotton bales, and your petitioner and his said brother are both officers of American Manufacturing Co., which with other things manufactures the loosely woven cloth that covers the cotton

bales, called cotton bagging. They also for purposes of convenience and not for profit act as selling agents for American Manufacturing Co. for the sale of its bagging west of the State of Alabama.

II. That heretofore and on or about the 5th day of June, 1917, your petitioner was served with a complaint by the Federal Trade Commission, a copy of which is hereunto annexed, marked Exhibit "A," wherein as a member of said firm he was among other things charged in the first count thereof as follows:

"That the respondents (meaning your petitioner and his said firm) have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' and further paragraph 'three.' That with the purpose, intent, and effect of discouraging and stifling competition in interstate in the sale of such bagging, all of the respondents do now refuse and for more than one year past have refused to sell
4 any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging."

SECOND COUNT IN THE COMPLAINT.

"That the respondents have been and are violating the provisions of section 3 of an act of Congress approved October 15, 1914, entitled: "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," as follows:

Paragraph three: "That the respondents have sold and are now selling and making contracts for sale of large quantities of such ties and such jute bagging for use, consumption and resale throughout the United States, and have fixed and are now fixing the price charge therefore or discount from, or rebate upon such price on the condition, agreement or understanding that the purchasers thereof shall not use or deal in the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of respondents and that the effect of such sales and contracts for sales or such conditions, agreements, or understandings may be and is to substantially lessen competition or to tend to create a monopoly in such cotton ties and jute bagging industry."

III. That your petitioner and the said firm of Warren
5 Jones & Gratz, duly appeared before said Federal Trade Commission, by his and their attorney, Thomas F. Magner, Esq., of No. 32 Court Street, Brooklyn, New York, and filed their answer to the aforesaid complaint wherein and whereby they denied each and singular those allegations in the said complaint hereinbefore specifically set forth, as well as the conclusions both

law and fact drawn therefrom by said Commission. That a copy of said answer is annexed hereto marked Exhibit "B."

IV. That thereafter such proceedings were had before said Commission that examinations were had before Hon. George McCorckle, an examiner appointed by the Commission of witnesses subpœnaed both by the Commission and by your petitioner, which examinations were conducted on behalf of the Commission by an attorney appointed by them at New York City, Pittsburg, Pa., Norfolk, Va., St. Louis, Mo., Jackson, Miss., and New Orleans, La. That on the completion of the taking of such testimony the said examiner after mature consideration sumbitted his report to the Commission, a copy of which report is annexed hereto marked Exhibit "C," together with the testimony taken. That your petitioner duly filed his exceptions thereto, a copy of which is hereunto annexed marked Exhibit "D." That thereafter and on the 8th day of October, 1918, a hearing was had by the said Commission at the office of the Commission at Washington, D. C., at which the chief counsel for the Commission, Hon. John J. Walsh, and his associate counsel, Hon. W. T. Roberts, argued to sustain the report of the said examiner and your petitioner was there represented by Thomas F. Magner, Esq., who opposed the same. That thereafter and on or about the 12th day of October, 1918, the Commission handed down a decision including findings as to the facts and conclusions of law, and entered an order therein, a copy of which is annexed hereto as Exhibit "E."

V. That in and as findings of fact the said Commission has found as follows:

Paragraph one: "That the respondents, W. H. Fitzhugh and Alexander Fitzhugh and C. O. Elmer were and are the general selling and distributing agents of said Anderson Gratz and Benjamin Gratz, in the sale and distribution of steel ties and cotton bagging; that Anderson Gratz and Benjamin Gratz were and are the general selling and distributing agents of the Carnegie Steel Company, for the selling and distributing of its steel ties; and were the selling and distributing agents for the American Manufacturing Company for the sale and distribution throughout the States commonly known as the Cotton States of the jute bagging manufactured by them."

Paragraph two: "That within three years last past Anderson Gratz and Benjamin Gratz, co-partners, and William H. Fitzhugh and Alexander Fitzhugh and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wished to buy steel ties from the said Anderson Gratz and Benjamin Gratz, either through themselves or their general agents Fitzhugh and Elmer, to also buy at the same time from said respondents a corre-

sponding amount of American bagging manufactured by the American Manufacturing Company, of which company Anderson Gratz and Benjamin Gratz were the sole selling and distributing agents in all the territory west of the Mississippi River where cotton is grown and bagging and ties are sold."

Paragraph three: "That the said respondents, Anderson Gratz and Benjamin Gratz, were and are the sole selling and distributing agents of the Carnegie Steel Company in the sale and distribution of its entire output of steel ties made and sold for the purpose of binding bales of cotton; and that the Carnegie Company manufactures and sells annually about 75 per cent of all the steel ties manufactured for such purpose in the United States."

Paragraph four: "That the said respondent sold and distributed such a large proportion of the amount of such ties manufactured and sold in the entire cotton-growing section of the country that they had what amounted to a monopoly of the cotton tie business of the country * * * and that the dominating and controlling position occupied by the respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by American Manufacturing Company, and in many instances said respondents refused to sell
8 ties unless the purchasers would also buy from them a corresponding amount of bagging, and such purchasers were oftentimes compelled to buy bagging manufactured by American Manufacturing Company from said respondents in order to obtain a sufficient supply of steel ties used for the purpose aforesaid."

That as a conclusion of law said Commission found as follows:

"That the methods of competition set forth in the foregoing findings as to the facts and each of them are under the circumstances set forth unfair methods of competition in interstate commerce against other manufacturers, dealers, and distributors of jute bagging and against other dealers and distributors in the material known as sugar bag cloth and against manufacturers, dealers, and distributors of the bagging known as rewoven bagging and secondhand bagging in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes'; and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of section 3 of an act of Congress known as the Clayton Act."

And the said Commission thereupon, on the 12th day of October, 1918, duly made and have served upon your petitioner the following order:

"It is ordered that the respondents Anderson Gratz and
9 Benjamin Gratz, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, Wm. H. Fitzhugh and Alexander Fitzhugh, doing business under the firm name and style of P. P. Williams & Co.; and C. O. Elmer, their officers and

agents, cease and desist from requiring purchasers of cotton ties to also buy or agree to buy a proportionate amount of American Manufacturing Company's bagging, and, further, that the respondents cease and desist from refusing to sell cotton ties unless the purchasers buy or agree to buy from them corresponding amounts of American Manufacturing Company's bagging or any amount of cotton bagging of any kind."

Your petitioner respectfully prays for an order of this court setting aside the findings as to the facts and the conclusions of law and the order of the Federal Trade Commissioner hereinbefore referred to for the following reasons:

First. On the ground that incompetent and illegal evidence was admitted by the examiner, and that this illegal evidence influenced the examiner in making his findings and report and the Commission in making its findings and order.

Second. On the ground that there is no evidence to support the findings of the Commission, and that the findings of the Commission are contrary to the weight of the competent evidence before the Commission in the following particulars:

(1) That W. H. Fitzhugh and Alexander Fitzhugh and the firm P. P. Williams & Co. are and were the agents of Warren, Jones & Gratz, the weight of competent evidence being that they were the agents of American Manufacturing Company.

(2) That Warren, Jones & Gratz, were the general selling and distributing agents of American Manufacturing Company for the sale and distribution throughout the States, commonly known as the Cotton States, of jute bagging manufactured by American Manufacturing Company as is found in paragraph one of the findings, and not as agents for the American Manufacturing Company for the territory west of the Mississippi only, as is found to be the fact by the Commission in paragraph two of the findings.

(3) "That within three years last past the respondents adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wished to buy steel ties from respondents to also buy at the same time from them a corresponding amount of American bagging"; the evidence of all the witnesses being confined to a very short period in 1916, as to the time; and the testimony of every single witness produced being that they obtained in that year and at all other times all the steel ties they desired to purchase in time for all their requirements; that they purchased them from the respondents at a time when all others had refused to sell them; that they obtained them without buying American bagging; and that they bought them at a price lower than the competitors of respondents were selling them for at the same time; the findings as to the facts by the Commission in this regard being directly

contrary to the evidence and the conclusion of the Commission as to the purpose that actuated the respondents therefore being entirely unsupported by any evidence, likewise the effect thereof.

(4) That the Carnegie Steel Company manufactures annually about 75 per cent of all the steel ties manufactured for the purpose of binding the bales of cotton, and sufficiently dominates the cotton-tie situation as to fix and control the price thereof; the only evidence in the case being that produced by the attorneys for the Commission, and to the effect that the Carnegie Company in 1915 manufactured 59 per cent; in 1916, 59 per cent; and in 1917, 65 per cent of the "new" ties manufactured; and all the evidence showing that many hundreds of thousands of bundles of remade and pieced ties were manufactured in addition, and that the increase in percentage of new ties made by the Carnegie Company in those years was due to the fact that the other manufacturers refused to make as many ties as they had made in former years, and that one manufacturer had entirely ceased to fabricate them because it was more profitable to make hoops; and the commanding position of the Carnegie Company in the steel-tie trade was due to the fact that they made these ties at a sacrifice of greater profits in other fabrications of steel, such as hoops, when their competitors had refused to sacrifice such profits, and that the Carnegie Company were largely influenced in their conduct in that regard by the prayers of your petitioner.

(5) That the respondents, Warren, Jones & Gratz, are the sole selling and distributing agents of the Carnegie Company for the sale and distribution of its entire output of steel ties, the evidence being to the contrary.

12 Third: On the ground that the conclusion of law "That the methods of competition set forth in the foregoing finding as to the facts are under all the circumstances therein set forth unfair methods of competition in interstate commerce against other manufacturers, dealers, and distributors of jute bagging and against other dealers and distributors in the material known as sugar bag cloth, and against mnufacturers, dealers, and distributors of the bagging known as rewoven bagging and second-hand bagging in violation of the provisions of section 5 of an Act of Congress approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties and for other purposes,'" is not warranted to be drawn from any and all of the findings as to the fact made by the Commission.

There is no finding of fact or proof showing in what manner respondents' methods are unfair, or that they were in any manner different from the methods of their competitors, or that the public or any individuals were injured by the practice of the respondents as found by the Commission; no finding and no proof that they were compelled to pay a greater price for either the ties or the bagging purchased from respondents than they otherwise would have; no finding and no proof that they were unable to procure either ties or bagging in any quantity desired; no finding and no

proof that their competitors both in ties and bagging did not obtain all the ties and bagging they desired; and no proof and no finding that the respondents either sought to or did obtain a single customer of their competitors; and no proof and no finding that any competitor of respondents suffered any injury through any policy or method of trade practiced by the respondents on patrons of their competitors in either ties or bagging.

13 The only findings of fact made by the Commission on which they might even claim to base this conclusion are:

(a) The finding in paragraph "two" "that the respondents practiced the policy of refusing to sell ties without a corresponding amount of American bagging" and

(b) The finding in paragraph four "That in many instances the respondents refused to sell ties unless the purchaser would also buy a corresponding amount of bagging manufactured by the American Manufacturing Company, and such purchasers were oftentimes compelled to buy American bagging in order to procure ties."

As to the finding in paragraph "four" the entire evidence is to the contrary; and as to the finding in paragraph "two" the uncontradicted evidence is that the only ties sold with American bagging were ties bought and owned by the American Manufacturing Company and sold by American Manufacturing Company to go with their own bagging.

Fourth: On the ground that the acts set forth in the findings of fact framed by the Commission do not constitute a violation of what is known as the Federal Trade Commission law, as is set up in the complaint herein. The complaint in paragraph "three," count I, alleges: "That with the purpose, intent, and effect of stifling competition in interstate commerce" the respondents have practiced the acts therein alleged and set up in the findings as to facts. But there is no findings of facts that the respondents were prompted in their conduct by any desire or intent to stifle competition in interstate commerce, or that their conduct had the effect of

14 stifling competition. The complaint following the law alleges it was "in the interest of the public" to institute the proceedings. There is no finding that the public have been injured in any manner by respondents' conduct, or that it would be to the interest of the public to stop the respondents' methods of trade. On the contrary the record shows that the public were benefited by the acts of the respondents, that by reason of the conduct of the respondents the consumers of cotton ties were enabled to purchase the same much cheaper than all other fabrications of steel, and the consumers of cotton bagging were enabled to purchase the same much cheaper than all other articles made from jute.

Fifth: On the ground that the Commission in their conclusions of law that "the methods of competition of respondents have been 'unfair,' have only stated their individual conception of the ordinary meaning of the term 'unfair' and not its legal signification as employed in the act of Congress, to wit, 'unfair' in that 'the acts of re-

spondents constitute an injury to the public; and an act that is in violation of some legal enactment, such as the antitrust or anti-monopoly law.'" And in characterizing the methods of respondents as unfair the Commission has set up their inexperienced views of business methods against what all the witnesses have testified has been the custom of trade in the tie and bagging business from time immemorial of selling ties and bagging together in proportionate quantities.

Sixth: On the ground that the record shows that the conduct of the Commission in their examination has been unfair to and prejudiced against the respondents herein and that their findings and
15 order are the result of prejudice and cities in that regard the following particulars: (1) The complaint in the second count alleges:

Paragraph three. "That all of said respondents in violation of section 3 of the Clayton Act have sold and made contracts for sale and are now selling and making contracts for sale of large quantities of such ties and such jute bagging for use, consumption and resale within the United States and have fixed and are now fixing the price charged therefor, or discount from or rebate upon such price on the condition, agreement or understanding that the purchaser thereof shall not use or deal in the goods, wares or merchandise, supplies or other commodities of a competitor or competitors of the respondents, and that the effect of such sales and contracts for sales or such conditions, agreements or understandings may be and is to substantially lessen competition or tend to create a monopoly in such cotton tie and jute bagging industry."

That the aforesaid allegations charged your petitioner and the other respondents, as he is informed and believes, with the commission of a crime as contrary to the provisions of the so-called Sherman and antitrust laws. That previous to the framing of the said complaint the Commission caused to be sent broadcast throughout the cotton growing States a circular letter co'taining among other things the following statement and request:

"We are investigating conditions affecting the distribution and sale of cotton ties and bagging and desire to communicate directly with any persons who have been unable to purchase ties with-
16 out a corresponding amount of bagging. I shall be greatly obliged, therefore, if you will furnish the names and addresses of any of your customers who will be able to supply any information concerning the facts above mentioned."

That your petitioner is informed and believes that many hundreds of these circulars were distributed abroad in the cotton States where your petitioner's firm was favorably known after forty years of trading. That many answers favorable to your petitioner's methods of doing business were received by the Commission. That neither these letters nor the writers thereof were subpoenaed by the Commission, but that persons with personal grievances against your petitioner's firm were subpoenaed. That before the Commission

framed their complaint and spread upon the public records the serious charges contained therein they had all the information they ever obtained concerning petitioner's firm's methods of business, yet not a single witness was produced to support said charges and on the contrary respondents produced five disinterested worthy witnesses, two of whom were his competitors in business, who testified that your petitioner actually sent some of respondent's best customers to their competitors in the cotton tie trade to have their competitors supply wants of respondent's customers, to the pecuniary loss of your petitioner and his co-partner. And the uncontradicted evidence of W. H. Fitzhugh is to the effect that he had purchased large quantities of cotton bagging and sold it in his business in competition with American bagging, and sold it in patterns with Carnegie ties, and that he had been advised to purchase this bagging and carry it in his trade by the petitioner herein, that likewise he
17 had purchased other than Carnegie ties at petitioner's request.

Yet the Commission makes no finding of fact to exculpate your petitioner and his copartner from this serious charge, and merely asserts as a conclusion of law "that there is not sufficient proof submitted in the hearings to sustain the charge."

(2) From the number, character, and testimony of the witnesses examined by the attorneys for the Commission. Although extraordinary efforts were taken by the Commission to reach and obtain witnesses to support the allegations in the complaint, but sixteen were examined on behalf of the Commission to support the charges their complaint contained. Not one of these sixteen witnesses testified to any matters relating to the charge in violation of the Clayton law, and not a single witness of the sixteen so produced testified they were asked or required not to purchase ties or bagging from competitors of respondents, or that they were at any time compelled to buy bagging in order to obtain ties as the Commission alleged in the first count of the complaint. But on the contrary every single witness produced by the Commission who desired to purchase ties testified that he purchased all the ties he desired without being compelled to purchase bagging during the period complained of by the Commission. And moreover that they purchased their ties from the respondents when every other dealer had refused to sell them ties and at a price lower than any of the respondent's competitors had offered ties to them for sale. The attorneys for the Commission in examination of these witnesses have not adhered to the rules of law, but with the intent to bind these respondents by their answers, have asked witnesses incompetent questions about their deal-
18 ings with persons other than these respondents with whom these respondents had no relationship whatsoever, and introduced as evidences into this record such conversations, some of them gossip over the telephone wires. That this testimony was regarded as important and had its effect in making their determination by the Commission your petitioner verily believes as the same was used by the counsel for the Commission in his argument and in the brief

filed by him with the Commission to support the charges in the complaint. That at least three of the sixteen witnesses examined by the Commission gave such incompetent testimony. That another of the sixteen witnesses produced it was shown had defrauded the respondents of a large sum of money in years previous, and two of the others had defaulted in their contracts to the injury of the respondents. That the complaining witness it was shown was induced to make his complaint by the principal competitor of the American Manufacturing Company, whose officers these respondents are on information shown, even by this same complaining witness, to be untrue.

That by reason of the foreging your petitioner believes and alleges that the Commission was prejudiced against your petitioner in making their findings, conclusions, and order herein.

Seventh: On the ground that the order singles out for punishment the respondents from all other merchants dealing in cotton ties and cotton bagging and is in contravention of their constitutional rights.

The evidence of W. H. Fitzhugh shows that he is a general merchant dealing in seventy different articles, that he deals in Calcutta and Ludlow bagging as well as American bagging; that he
19 deals in other ties as well as Carnegie ties. Yet under this order he may not sell any ties with any kind of bagging.

The evidence shows that the petitioners not only have violated no law, that they have not created and do not enjoy a monopoly but on the contrary that the methods of business pursued by them resulted in the promotion of the general welfare, and it was not in the interest of the public that the investigation was had, and the findings and order of the Commission are null and void therefor.

Your petitioner further alleges that he and his brother Benjamin Gratz, who are the entire firm of Warren, Jones & Gratz, have been general merchants for over forty years, and during all of said time they have been engaged in selling cotton ties on commission, and were merchants in cotton bagging up to 1890. Since that time the firm has not dealt in bagging but both Anderson Gratz and Benjamin Gratz have acted as officers of American Manufacturing Company in selling their bagging. In recent years it has been to the advantage of American Manufacturing Company to use the firm name for the sale of bagging west of the State of Alabama, but without any compensation to the firm therefor, except such as Anderson Gratz and Benjamin Gratz receive as officers of American Manufacturing Company. The firm has been a selling agent for the Carnegie Company since 1900. They are not their sole agent.

Previous to 1915, there were engaged in manufacturing new steel ties in the United States the Carnegie Steel Co., The Pittsburgh Steel Co., The Atlantic Steel Co., The Connors-Weyman Co., and the Sharon Steel Co. In 1914 the Carnegie Co. manufactured about forty-three (43) per cent of all the new ties. In 1915, the Sharon Co. ceased
20 to make cotton ties, and each successive year up to the present the other companies excepting Carnegie Co. manufactured less

ties. The reason therefor was that the price of cotton ties did not increase relatively with the price of other articles fabricated from steel. Cotton ties were fabricated from steel hoops at a cost of two ($2.00) dollars per ton and sold at a lower price than the hoops from which they were fabricated. The Carnegie Co., at the instance and persistent requesting of the petitioner, Anderson Gratz, made more ties each year. In 1915, they made fifty-nine (59) per cent of all the new ties; in 1916 fifty-nine (59) per cent; and in 1917, sixty-five (65) per cent. While this gave the Carnegie Co. a commanding position in the cotton tie market it did not by any means amount to a monopoly, for in addition to the new ties manufactured there were many hundreds of thousands of bundles or remade and pieced ties manufactured and used, principally in the Southeastern States, to bind the cotton bales covered with the pieced and rewoven bagging.

Nor did the Carnegie Company or your petitioner use their commanding position in the tie trade to their own selfish interest and to the injury either of their competitors or of the consumers of ties. On the contrary, as we shall show hereinafter, your petitioner not only besought the Carnegie Co. to make ties and more ties, but in order to save the critical situation in the matter of gathering the cotton crop in 1916 he personally besought his competitors, the Atlantic Steel Co. and the Connors-Weyman Co., also to make more ties and sent to them some of his best customers to be supplied by them with cotton ties to his your petitioner's pecuniary loss.

The American Manufacturing Company manufactures
21 forty-five (45) per cent of all the new bagging required to cover the cotton crop. Their principal competitor, Ludlow Associates, manufactures about twenty (20) per cent of the new bagging. The remaining thirty-five (35) per cent of the covering of the cotton crop consists of rewoven and pieced bagging which generally is bound with the remade and pieced ties and bagging made from the burlap bags that originally covered the sugar crop marketed by Young & Metzner. For a number of years it had been customary for the American Co. to purchase from the Carnegie Co. a quantity of ties sufficient to go with their bagging. The Ludlow Co. likewise purchased from the Carnegie Co. a sufficient number of ties to be sold with their bagging west of the Mississippi, and from the Atlantic Steel Co. at Atlanta, Ga., they bought a number sufficient to go with their bagging in the Southeastern States.

This custom had become necessary by reason of the practice that had grown up of selling bagging and ties by the pattern; i. e., six yards of bagging, together with six ties, enough to cover and bind one bale of cotton. This custom had become so well established in the States west of the Mississippi that the railroads there make special rates for mixed loads of bagging and ties. The cotton-oil mills, dealers, and merchants sell that way, and the American Co. and the Ludlow Co. must have ties to go with the bagging sold in that territory, and Young & Metzner must have ties to go with their sugar cloth there sold. The market for cotton ties was usually opened

when the Carnegie Co. in June made public its price for the year. In 1916 this occurred on June 26th. The ties were usually delivered in July and August for use beginning about September each year.

22 In 1916 the price of steel advanced greatly by reason of the increased demand therefor occasioned by the World War. Early in the year long before the market opened, the prices of nails and wire advanced and there was a disposition among the speculative merchants in the South to buy and hoard cotton ties. Several of the witnesses for the Commission were of this class. One of them, M. M. Graves, a witness for the Commission, admitted that he had made over one hundred thouand ($100,000) dollars in sales of ties at an advance above the market price before the market opened in June. Scare-head circulars were sent broadcast throughout the South calling attention to the scarcity of steel, to threatened tie-ups and strikes, and urging all to buy long before the market opened. There was a panic for ties. The price advanced as much as a dollar a bundle above the Carnegie Company's opening price. Warren, Jones & Gratz as selling agents for Carnegie as early as January had sold to Ludlow Co., one hundred and fifty thousand (150,000) bundles of ties, which with what they had carried over from 1915 and what they purchased from the Atlantic Steel Co. gave them 400,000 bundles to bind twenty (20) per cent of the cotton crop. The American Co. had purchased 500,000 bundles from Carnegie Co. to bind forty-five (45) per cent of the crop—Young & Metzner were offered all the ties they required to go with their sugar cloth. In addition to these there remained only the manufacturers of the rewoven and pieced bagging to be supplied and these were principally in the Southeastern States and were accustomed to use the pieced and remade ties. But to a number of these your petitioner allotted a large quantity of ties; for example, the Carolina Bagging Co., which had never been a customer of your

23 petitioner, received and sold 103,000 bundles of Carnegie ties.

As the demand for ties grew the Ludlow Co. hoarded their ties and refused to sell them to their customers for bagging, and the Carolina Co. sold theirs at an advance in price and without bagging. This did not allay the desire for ties and the demand increased. To stop the speculation which threatened to make a crazy market and to be assured that only those who wanted to use the ties would get them, your petitioner used every endeavor to lessen the sale of cotton ties and every endeavor to increase the output. To that end he besought his competitors, the Atlantic Co. and the Connors-Weyman Co., to make an increased number of ties; asked them to relieve him and the Carnegie Co. from some of the demands of his own and the Carnegie Company's customers who had become panic stricken by the agitation caused by the scare-head circulars, and the Carnegie Co. having already oversold its stock of ties, your petitioner caused it to be known for a few weeks in June that they

would not sell ties unless with a proportionate amount of bagging. This remedy not being entirely effective the American Manufacturing Company in July at the solicitation of your petitioner turned back to your petitioner its stock of spot ties purchased from Carnegie Co. and bought to go in their mixed cars in the Southwest and from this stock sold ties to all comers. Among the American Company's cotton ties so sold were those sold by the respondents, P. P. Williams & Co. In addition to the American Manufacturing Company's ties thus sold, Warren, Jones & Gratz sold for the Carnegie Co. up to July 31st over 500,000 bundles of ties, more than the Carnegie Co. had manufactured or intended to manufacture. They sold ties to everybody who wanted to buy. They sold these ties
24 at a price lower than that received by all their competitors for their ties, and without profit either to themselves or to American Manufacturing Co.; they sold them to the buyers of bagging other than American bagging and at the same price paid for them as the users of American bagging; they sold them without bagging; they sold them to the Ludlow Company's customers when the Ludlow Company refused them; and in so overselling the market they made themselves liable for a great pecuniary loss if the buyers of ties had not defaulted on their contracts as soon as they ascertained that cotton ties could be had for the asking.

In accomplishing this result, Warren, Jones & Gratz, refused to make large profits which both morally and legally they might have made. Both ties and bagging they sold much cheaper relatively than any other articles manufactured from steel and jute. In 1916 hoops sold for $9.27 a ton more than cotton ties, and burlap bags advanced 304 per cent over the price of 1915, while cotton bagging advanced but 45 per cent.

In pursuing this policy your petitioner alleges that the said firm of Warren, Jones & Gratz violated no rule of trade, and no law either moral or civil; and they allege that they did not seek to obtain any of the customers of their rivals in the trade either of bagging or ties, and they turned some of their best customers over to their rivals; they made no inducements to their competitors' customers either in prices or goods, and in selling ties with a proportionate amount of bagging they pursued a line of policy which every merchant and broker in the tie and bagging trade in the South has pursued from time immemorial, and which every merchant who was examined as a witness on behalf of the Commission testified was the only way in which their business could be successfully conducted.

45 Wherefore, your petitioner prays for a review by this honorable court of the findings and the order of the said Federal Trade Commission, and for an order of this court directing the said Commission to forthwith certify and file with the clerk of this court a transcript of the record of their proceedings therein to the end that this court may make an order herein that the findings and order

of the said Commission herein may be set aside, together with such other and further relief in the premises as may be just and equitable, and for this your petitioner will ever pray.

Dated, Brooklyn, N. Y., November 8, 1918.

ANDERSON GRATZ.

CITY OF NEW YORK,
Borough of Brooklyn, ss:

Anderson Gratz being duly sworn deposes and says that he has read the foregoing petition, that the same is true of his own knowledge except as to the matters therein stated on information and belief and as to these matters he believes it to be true.

ANDERSON GRATZ,
Notary Public Kings County.

Sworn to before me this 12th day of November, 1918.

WM. F. METZLER,
Notary Public, Kings County No. 199,
Kings County Register No. 9041.

My commission expires March 30, 1919.

26 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 4th day of June, A. D. 1917.

Present: William J. Harris, chairman; Joseph E. Davies, William B. Colver, J. Franklin Fort, commissioners.

FEDERAL TRADE COMMISSION
vs.
ANDERSON GRATZ AND BENJAMIN GRATZ, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alex. Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer.

Complaint in the matter of the alleged violation of section 5 of the act of Congress aproved September 26, 1914, and of alleged violation of section 3 of the act of Congress approved October 15, 1914.

Docket No. 12.

The Federal Trade Commission having reason to believe, from a preliminary investigation made by it that Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm
27 name and style of Warren, Jones & Gratz; P. P. Williams. W. H. Fitzhugh and Alex. Fitzhugh, co-partners, doing business under the firm name and style of P. P. William & Co., and Charles O. Elmer, all of whom are hereinafter referred to as respondents, have been, and are, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of

the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

I.

Paragraph one: That the respondents, Anderson Gratz and Benjamin Gratz, are co-partners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the city of St. Louis and State of Missouri, and are engaged in the business of selling, in interstate commerce, either directly to the trade, or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Company of Pittsburg, Pennsylvania, and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Company, of St. Louis, Missouri.

Paragraph two: That the respondents, P. P. Wiliams, W. H. Fitzhugh and Alex. Fitzhugh, are co-partners, doing businss
28 under the firm name and style of P. P. Wiliams & Co., having their principal office and place of business in the city of Vicksburg and State of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans and State of Louisiana, are the selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginners, and farmers.

Paragraph three: That with the purpose, intent, and effect of discouraging and stifling competition in interstate commerce in the sale of such bagging, all of the respondents do now refuse, and for more than a year last past have refused to sell any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties proposed to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging.

II.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alex. Fitzhugh, co-partners, doing business under the firm name

and style of P. P. Williams & Co., and Charles O. Elmer, all of whom are hereinafter referred to as respondents, have been, and are,
violating the provisions of section 3 of the act of Congress
29 approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," further complaints against said respondents, stating its charges in that respect, on information and belief, as follows:

Paragraph one: That the respondents, Anderson Gratz and Benjamin Gratz, are co-partners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the city of St. Louis and State of Missouri, and are engaged in the business of selling, in interstate commerce, either directly to the trade or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Company of Pittsburgh, Pennsylvania, and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Company, of St. Louis, Missouri.

Paragraph two: That the respondents, P. P. Williams, W. H. Fitzhugh and Alex. Fitzhugh, are co-partners, doing business under the firm name and style of P. P. William & Co., having their principal office and place of business in the city of Vicksburg and State of Mississippi, and the said last named respondents and the said respondent, Charles O. Elmer, who is located and doing business at the city of New Orleans and State of Louisiana, are selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell
and distribute the ties and bagging, manufactured as afore-
30 said, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginners, and farmers.

Paragraph three: That all of the said respondents for more than a year last past, in the course of interstate commerce, in violation of section 3 of the Clayton Act, have sold and made contracts for sale, and are now selling and making contracts for sale, of large quantities of such ties and such jute bagging, for use, consumption, and resale within the United States, and have fixed, and are now fixing, the price charged therefor, or discount from, or rebate upon such price on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the goods, wares, merchandise, supplies, or other commodities of a competitor or competitors of respondents, and that the effect of such sales and contracts for sales, or such conditions, agreements, or understandings may be and is to substantially lessen competition or to tend to create a monopoly in such cotton-tie jute-bagging industry.

Therefore notice is hereby given you, the said respondents, and each of you, that the charges in this complaint will be heard by the Federal Trade Commission at its office in the Commerce Building in

the city of Washington, D. C., on the 6th day of August, A. D. 1917, at 10.30 o'clock in the forenoon of said day, or as soon thereafter as the same may be reached, at which time and place you shall have the right to appear and show cause why an order should not be entered by the Federal Trade Commission requiring you, and each of you, to cease and desist from the violations of law charged in this complaint.

And you, and each of you, will further take notice that
31 within thirty (30) days after the service of this complaint you are required to file with the Commission an answer in conformity with Rule III of the Rules of Practice before the Commission.

In witness whereof the Federal Trade Commission has caused this complaint to be issued, signed by its secretary, and its official seal to be affixed hereto, at the city of Washington, D. C., this 4th day of June, A. D. 1917.

By the Commission.

(Signed) LEONIDAS L. BRACKEN,
Secretary.

32 Before Federal Trade Commission.

FEDERAL TRADE COMMISSION *vs.* ANDERSON GRATZ AND BENJAMIN GRATZ, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alex Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer.	Answer.

The respondents above named answer the complaint of the Federal Trade Commission in the above entitled matter as follows:

To the first complaint that the respondents violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the respondents answer:

They admit the facts alleged in paragraphs of said first complaint entitled paragraph one and paragraph two.

They deny both the allegations of fact and the conclusions therefrom contained in paragraph three.

Answering the second complaint that the respondents have been and are violating the provisions of section 3 of the act of Congress
33 approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the respondents allege:

They admit the allegations of fact contained in paragraphs one and two.

They deny each and singular the allegations of fact contained in paragraph three of said second complaint.

Wherefore, the respondents pray that the above complaints be both dismissed and that they have such other and further relief in the premises as may be just and proper.

WARREN, JONES & GRATZ,
By THOMAS F. MAGNER,
Attorney.

34 FEDERAL TRADE COMMISSION
vs.
ANDERSON GRATZ AND BENJAMIN GRATZ, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, co-partners doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, respondents. | Docket No. 12.

REPORT OF EXAMINER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondents, Anderson Gratz and Benjamin Gratz, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, doing business under the firm name of P. P. Williams & Co., and Chas. O. Elmer, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearance by their attorneys at law, Biggs & Biggs,
35 General T. C. Catchings, and Honorable Thomas F. Magner, and formal hearings having been held before an examiner of the Commission; testimony being introduced on the behalf of the Commission and the respondents, and argument of counsel having been made before said examiner, and the examiner having taken the proceeding under advisement, now on this the 18th day of September, 1918, on the pleadings and testimony the examiner makes his report and proposed findings as to the facts.

PROPOSED FINDINGS AS TO THE FACTS.

1. That the respondents, Anderson Gratz and Benjamin Gratz, doing business under the firm name and style of Warren, Jones &

Gratz, a co-partnership having their principal office and place of business in the city of St. Louis, State of Missouri, are engaged in selling in interstate commerce, directly to the trade or through their agents, the respondents P. P. Williams & Co., and Chas. O. Elmer, steel ties made and used for binding bales of cotton, which ties are manufactured by the Carnegie Steel Company of Pittsburg, Pa.; and also are selling in the same manner jute bagging used for baling cotton, which bagging is manufactured by the American Manufacturing Company of St. Louis, Mo., at its factories located at St. Louis, Brooklyn, New York, and Charleston, S. C.

2. That the respondents, P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the city of Vicksburg, Miss., and the respondent Chas. O. Elmer, located and doing buisness in the
36 city of New Orleans in the State of Louisiana, are selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute ties and bagging in interstate commerce to jobbers and dealers who resell same to retailers, cotton ginners, and farmers located in the cotton growing States of the United States.

3. That the respondents, Warren, Jones & Gratz, were and are the general selling and distributing agents for the Carnegie Steel Co., located at Pittsburg, Pa., in the sale and distribution of steel ties manufactured by said company and used for the purpose of binding bales of cotton; and that the said firm of Warren, Jones & Gratz were and are the general selling and distributing agents of the American Manufacturing Company, the principal office of which company is in the city of Brooklyn, N. Y., for the sale and distribution throughout the cotton growing States of the United States, of jute bagging manufactured and used for the purpose aforesaid.

4. That the said respondents, Warren, Jones & Gratz, were and are the sole selling and distributing agents of the Carnegie Steel Co. aforesaid, in the sale and distribution of its entire output of steel ties made and sold for the purpose of binding bales of cotton; and that the Carnegie Steel Company manufactures and sells annually 75 per cent of all the steel ties made in the United States for the purpose of baling cotton; and that the said company sufficiently dominates the cotton tie situation in the United States to enable it to fix and control the price of such ties throughout the country; and that about 45 per cent of the jute bagging required to bale the cotton crop of the Southern States is annually manufactured
37 by the Ludlow Manufacturing Associates of Boston, Mass., and the remaining requirement for baling the cotton crop, namely, about 35 per cent is made up by the use of secondhand bagging and material called sugar-bag cloth. This cloth as well as the secondhand or rewoven bagging is in considerable demand by dealers and those engaged in baling cotton and is sold and dis-

tributed by dealers throughout the Southern States of the United States, in active competition with the jute bagging manufactured by the American Manufacturing Company and sold and redistributed by the said respondents, Warren, Jones & Gratz.

5. That within three years last past, respondents adopted and practised the policy of refusing to sell steel ties to those merchants and dealers who wished to buy ties from them without such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wish to buy steel ties from said Warren, Jones & Gratz, either through themselves or their general agents, P. P. Williams & Co. and C. O. Elmer, to also buy at the same time from said respondents a corresponding amount of American bagging manufactured by the American Manufacturing Company, of which company the said respondents, Warren, Jones & Gratz, were the sole selling and distributing agents in all the territory west of the Mississippi River where cotton is grown and where bagging and ties are sold for the purpose aforesaid.

6. That a great many merchants, jobbers, and dealers in bagging and ties throughout the cotton growing section of the United States were many times unable to procure ties from any other firm
38 or source except Warren, Jones & Gratz or their said agents, P. P. Williams & Co. and C. O. Elmer, and that the said respondents sell and distribute such a large proportion of the entire amount of such ties manufactured and sold in the cotton growing States of the United States, that they, the said respondents, had what amounted to a monopoly of the cotton tie business of the country, controlling and distributing such a large proportion of the entire output of ties that cotton growers found it impossible to bale the cotton grown and produced in he coton growing States without applying to and purchasing from said respondents and their agents almost the entire output of such ties manufactured by the Carnegie Steel Company. The dominating and controlling position occupied by the said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them American bagging, and in many instances said respondents refused to sell ties without the purchaser would also buy from them a corresponding amount of bagging, and said purchasers were oftentimes compelled to buy American bagging from said respondents in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

Respectfully submitted.

GEORGE M. MCCORCKLE,
Examiner.

39 UNITED STATES OF AMERICA.
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION
vs.
ANDERSON GRATZ AND BENJAMIN GRATZ, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, respondents.

RESPONDENTS' EXCEPTIONS TO THE PROPOSED FINDINGS OF FACT MADE BY HON. GEORGE M'CORCKLE, EXAMINER.

The respondents Anderson Gratz and Benjamin Gratz except to the proposed findings of fact made by Hon. George McCorckle, examiner herein, as follows:

They except to so much of the proposed finding of fact marked "1" as finds that the respondents P. P. Williams & Company were the agents of the firm of Warren, Jones & Gratz and represented them in the sale of steel ties used for binding bales of cotton
40 and in the selling of jute bagging manufactured by the American Manufacturing Company. That there is no evidence to support the same, and on the contrary that the evidence shows that the said P. P. Williams & Company sold during the times alleged in the complaint herein the goods to the American Manufacturing Company and were the agents of the American Manufacturing Company in making said sales.

The respondents except to so much of the proposed finding of fact marked "2" that finds that the firm of P. P. Williams & Company are the selling and distributing agents of the firm of Warren, Jones & Gratz, on the ground that there is no evidence to support the same.

The respondents except to so much of the proposed finding of fact contained in the proposed finding of fact marked "3" which finds that said firm of Warren, Jones & Gratz are the general selling and distributing agents of the American Manufacturing Company for the selling and distributing throughout the cotton-growing States of the United States jute bagging and used for the purposes aforesaid, on the ground that there is no evidence to prove the same, but on the contrary the evidence is that the said firm do not represent the respondents in the cotton States east of the Mississippi River.

The respondents except to so much of the proposed finding of fact marked "4" as finds that the Carnegie Steel Co., which manufactures and sells steel ties made for the purpose of binding the bales of

cotton, sufficiently dominates the cotton-tie situation in the United States as to enable it to fix and control the price of such ties throughout the country, and that about forty-five (45%) per cent
41 of the jute bagging required to bale the cotton crop of the Southern States is annually manufactured by the Ludlow Manufacturing Associates of Boston, Mass., on the ground that the same is contrary and that there is no evidence to support the same.

The respondent excepts to the proposed finding of fact marked "5" as follows:

"That within three years last past, respondents adopted and practised the policy of refusing to sell steel ties to those merchants and dealers who wished to buy ties from them without such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wish to buy steel ties from Warren, Jones & Gratz, either through themselves or their general agents P. P. Williams & Co. and C. O. Elmer, to also buy at the same time from said respondents a corresponding amount of American bagging manufactured by the American Manufacturing Company, of which company the said respondents Warren, Jones & Gratz were the sole selling and distributing agents in all the territory west of the Mississippi River where cotton is grown and where bagging and ties are sold for the purpose aforesaid."

That the same is contrary to the evidence and on the ground that there is no evidence to support the same.

41 The respondents except to the proposed finding of fact marked "6" as follows:

"That a great many merchants, jobbers, and dealers in bagging and ties throughout the cotton-growing section of the United States were many times unable to procure ties from any other firm or source except Warren, Jones & Gratz or their said agents, P. P. Williams & Co. and C. O. Elmer, and that the said respondents sell and distribute such a large proportion of the entire amount of such ties manufactured and sold in the cotton-growing States of the United States; that they, the said respondents, had what amounted to a monopoly of the cotton-tie business of the country, controlling and distributing such a large proportion of the entire output of ties that cotton growers found it impossible to bale the cotton grown and produced in the cotton-growing States without applying to and purchasing from said respondents and their agents almost the entire output of such ties manufactured by the Carnegie Steel Company. The dominating and controlling position occupied by the said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them American bagging, and in many instances said respondents refused to sell ties without the purchaser would also buy from them a corresponding amount of bagging, and said purchasers were oftentimes compelled to buy American bagging from said respondents in order

to procure a sufficient supply of steel ties used for the purpose aforesaid."

43 That the same is contrary to the evidence and on the ground that there is no evidence to support the same.

Dated September 25th, 1918.

Yours, etc.,

THOMAS F. MAGNER,
Attorney for Respondents,
Office and P. O. Address No. 32 Court Street,
Brooklyn, N. Y.

To U. S. Federal Trade Commission, John J. Walsh, Esq., chief counsel.

44 UNITED STATES OF AMERICA,

Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 12th day of October, A. D. 1918.

Present: William B. Colver, chairman; John Franklin Fort, Victor Murdock, commissioners.

FEDERAL TRADE COMMISSION *vs.* ANDERSON GRATZ AND BENJAMIN GRATZ, CO-PARTNERS, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, respondents.	Docket No. 12.

FINDINGS AS TO THE FACTS AND CONCLUSIONS OF LAW.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above named respondents, Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company, and E. O. Elmer,

45 have been and now ore using unfair methods of competition to interstate commerce, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearance by their attorneys at law, W. H. and

Davis Biggs, T. C. Catchings, and Thos. F. Magner, and the Commission having offered testimony in support of its charges in said complaint, and the respondents having offered testimony in denial of said charges in said complaint, and attorneys for the Commission and the respondents having submitted their briefs as to the law and the facts in said proceedings, and having also made oral argument before the Commission on the law and the facts in said case, the Commission makes this report and findings as to the facts, and conclusions of law:

FINDINGS AS TO THE FACTS.

Paragraph one: That Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz, one of the respondents, is a co-partnership whose principal office and place of business is in the city of St. Louis, State of Missouri; that P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company, is a co-partnership with its principal office and place of business in the city of Vicksburg,
State of Mississippi; and that the other respondent, C. O.
46 Elmer, has his principal office and place of business in the city of New Orleans, State of Louisiana; that all of said respondents are now, and were at all times hereinafter mentioned, engaged in commerce among the several States and Territories of the United States in the sale and distribution of steel ties, manufactured and used for the purpose of binding bales of cotton jute bagging, manufactured and used for the purpose of covering and wrapping bales of cotton; and that the respondents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, were and are general selling and distributing agents for the said Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz, in the sale and distribution of said articles of commerce; and that the said Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the general selling and distributing agents for the Carnegie Steel Company located at Pittsburgh, Pennsylvania, in the sale and distribution of steel ties, manufactured and used for the purpose aforesaid; and that the said Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the general selling and distributing agents of the American Manufacturing Company, the principal office of which is in the city of Brooklyn, State of New York, for the sale and distribution throughout the States, commonly known as Cotton States, of jute bagging manufactured and used for the purpose aforesaid; and that Mente & Com-

47 pany with offices in the cities of New York and New Orleans, and many other persons sell and distribute a material known as sugar-bag cloth in interstate commerce throughout the cotton growing States of this country, which material is used for the purpose of wrapping bales of cotton, and that the Carolina Bagging Company, located at Henderson, North Carolina, manufacturers, sells and distributes in interstate commerce, throughout the cotton growing States of this country, what is known as rewoven bagging and that said material known as rewoven bagging is manufactured and sold for other corporations and co-partnerships in interstate commerce.

Paragraph two: That within three years last past respondents, Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wished to buy steel ties from the said Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz, either through themselves or their general agents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company,
48 and C. O. Elmer, to also buy at the same time from said respondent a corresponding amount of American bagging manufactured by the American Manufacturing Company, of which manufacturing company the said respondents, Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz, were the sole selling and distributing agents in all the territory west of the Mississippi River, where cotton is grown and where bagging and ties are sold for the purpose of covering and wrapping bales of cotton.

Paragraph three: That the said respondents, Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the sole selling and distributing agents of the Carnegie Steel Company of Pittsburg, Pennsylvania, in the sale and distribution of its entire output of steel ties made and sold for the purpose of binding bales of cotton; and that the Carnegie Steel Company manufactures and sells annually about 75% of all the steel ties manufactured for such purpose in the United States; and that the Carnegie Steel Company sufficiently dominates the cotton tie situation in the United States to enable it to fix and control the price of such ties throughout the country; and that about 45% of the jute bagging required to cover

the cotton crop of the Southern States is annually manufactured by the American Manufacturing Company and about 20% by the Ludlow Manufacturing Associates, of Boston, Massachusetts, and the remaining requirement for baling the cotton crop, viz, about 35%, is made up by the use of secondhand bagging and a material called sugar bag cloth. This cloth, as well as the second-
49 hand or rewoven bagging, is in considerable demand by cotton balers and is sold and distributed by dealers throughout the Southern States in active competition with the jute bagging manufactured by the American Manufacturing Company and sold and distributed by the said respondents.

Paragraph four: That a great many merchants, jobbers, and dealers in bagging and ties throughout the cotton-growing States were many times unable to procure ties from any other firm except Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz, or their said agents, P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, and that the said respondents sold and distributed such a large proportion of the entire amount of such ties manufactured and sold in the entire cotton-growing section of the country, that they, the said respondents, had what amounted to a monopoly of the cotton tie business of the country, controlling and distributing such a large portion of the entire output of cotton ties that cotton growers found it impossible to bind the cotton grown and produced in the Southern States without applying to and purchasing from the said respondents and their agents almost the entire output of such ties manufactured by the Carnegie Steel Company. The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Company and, in many instances, said respondents
50 refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging, and such purchasers were oftentimes compelled to buy bagging manufactured by the American Manufacturing Company from said respondents in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

CONCLUSIONS OF LAW.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 1, 2, 3, and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers, and distributors of jute bagging and against other dealers and distributors in the material known as sugar bag cloth, and against manufacturers, dealers, and distributors of the bagging known as rewoven bagging and secondhand bagging, in violation of

the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of section 3 of an act of Congress known as the Clayton Act.

WILLIAM B. COLVER, *Chairman*,
JOHN FRANKLIN FORT,
VICTOR MURDOCK,
Commissioners.

51 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 12th day of October, A. D. 1918.

Present: William B. Colver, chairman; John Franklin Fort, Victor Murdock, commissioners.

FEDERAL TRADE COMMISSION *vs.* ANDERSON GRATZ AND BENJAMIN GRATZ, CO-PARTNERS, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, respondents.	Docket No. 12.

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, Anderson Gratz and Benjamin Gratz, co-partners. doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, having entered their appearance by their attorneys at law, and the Commission having offered testimony in support of its charges in the said complaint, and the respondents having offered testimony in denial of said charges of the said complaint, and the attorneys for the Commission and the respondents having submitted their briefs as to the law and the facts in said proceedings, and the same having been argued before an examiner of the Commission and said examiner having made and presented to the Commission his proposed findings as to the facts, and the respondents having entered exceptions to said examiner's proposed findings as to the facts, and said exceptions having been duly argued before the Commission by counsel for the Commission and the respondent, and the Commis-

sion on the date hereof having made and filed a report containing its findings as to the facts and conclusions that the respondents have violated section 5 of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof.

Therefore, it is ordered, that the respondents, Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, their officers and agents, cease and desist from requiring purchasers of cotton ties to also buy or agree to buy, a proportionate amount of American Manufacturing Company's bagging and further that the respondents cease and desist from refusing to sell cotton ties
53 unless the purchasers buy or agree to buy from them corresponding amounts of American Manufacturing Company bagging, or any amount of cotton bagging of any kind.

By the Commission.

[SEAL.] L. L. BRACKEN,
Secretary.

54 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION *vs.* ANDERSON GRATZ AND BENJAMIN GRATZ, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer.	Docket No. 12.

I, Leonidas L. Bracken, secretary of the Federal Trade Commission, do hereby certify that hereto annexed is a full, true, and correct transcript of all the pleadings, stipulations, reports, findings as to the facts, order of the Commission, and testimony introduced in the above-entitled proceeding had before the Federal Trade Commission.

That Section I, pages 1 to 6, both inclusive, constitutes a copy of the Commission's complaint, dated June 4, 1917, in said proceeding.

That Section II, pages 1 to 13, both inclusive, constitutes copies of the separate answers of the several respondents.

That Section III, consisting of one page, constitutes a copy of the agreed statement of facts made and entered into by and between the Commission and respondents.

55 That Section IV, pages 1 to 3, both inclusive, constitutes a copy of the report of the examiner and proposed findings as to the facts.

That Section V, pages 1 to 4, both inclusive, constitutes a copy of the respondent's exceptions to the proposed findings of fact made by the examiner.

That Section VI, pages 1 to 4, both inclusive, constitutes a copy of the Commission's findings as to the facts and conclusions of law, dated October 12, 1918.

That Section VII, pages 1 to 2, both inclusive, constitutes a copy of the Commission's order to cease and desist, dated October 12, 1918.

That Section VIII, pages 1 to 902, both inclusive, constitutes a copy of all the testimony taken in this proceeding, which said testimony was reduced to writing and filed in the office of the Commission.

That this transcript is certified to the United States Circuit Court of Appeals for the Second Circuit, pursuant to service upon the Commission of a copy of a petition by Anderson Gratz, filed in said court November 14, 1918, to review the order of the Commission made herein on October 12, 1918.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the Federal Trade Commission at Washington, in the District of Columbia, this 13th day of January, A. D. 1918.

[SEAL.] (Signed) L. L. BRACKEN,
Secretary.

56 Federal Trade Commission, Docket No. 12.

Section I. Complaint issued by the Commission June 4, 1917.

57 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 4th day of June, A. D. 1917.

Present: William J. Harris, chairman; Joseph E. Davies, William B. Colver, J. Franklin Fort, commissioners.

Complaint in the matter of the alleged violation of section 5 of the act of Congress approved September 26, 1914, and of alleged violation of section 3 of the act of Congress approved October 15, 1914.

FEDERAL TRADE COMMISSION *vs.* ANDERSON GRATZ AND BENJAMIN GRATZ, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer.	Docket No. 12.

The Federal Trade Commission having reason to believe, from preliminary investigation made by it that Anderson Gratz and

Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alex Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and Charles O. Elmer, all of whom are hereinafter referred to as respondents, have been, and are, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for
58 other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief as follows:

Paragraph one: That the respondents, Anderson Gratz and Benjamin Gratz, are copartners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the city of St. Louis, and State of Missouri, and are engaged in the business of selling, in interstate commerce, either directly to the trade, or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Company of Pittsburgh, Pennsylvania, and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Company of St. Louis, Missouri.

Paragraph two: That the respondents, P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh are copartners, doing business under the firm name and style of P. P. Williams & Co, having their principal office and place of business in the city of Vicksburg, and State of Mississippi, and the said last-named respondent and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans, and State of Louisiana, are the selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as
59 aforesaid in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginners, and farmers.

Paragraph three: That with the purpose, intent, and effect of discouraging and stifling competition in interestate commerce in the sale of such bagging, all of the respondents do now refuse, and for more than a year last past have refused to sell any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties proposed to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging.

II.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alex Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and Charles O. Elmer, all of whom are hereinafter referred to as respondents, have been, and are, violating the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," further complains against said respondents stating its charges in that respect on information and belief as follows:

60 Paragraph one: That the respondents, Anderson Gratz and Benjamin Gratz are copartners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the city of St. Louis, and State of Missouri, and are engaged in the business or selling, in interstate commerce, either directly to the trade, or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Company of Pittsburgh, Pennsylvania, and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Company, of St. Louis, Missouri.

Paragraph two: That the respondents, P. P. Williams, W. H. Fitzhugh and Alex. Fitzhugh, are copartners, doing business under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the city of Vicksburg, and State of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans, and State of Louisiana, are selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginners and farmers.

61 Paragraph three: That all of the said respondents, for more than a year last past, in the course of interstate commerce, in violation of section 3 of the Clayton Act, have sold and made contracts for sale, and are now selling and making contracts for sale, of large quantities of such ties and such jute bagging, for use, consumption, and resale within the United States, and have fixed, and are now fixing the price charged therefor, or discount from, or rebate upon such price on the condition, agreement, or understanding that the purchasers thereof shall not use or deal in the goods, wares, merchandise, supplies, or other commodities of a competitor or com-

petitors of respondents, and that the effect of such sales and contracts for sales, or such conditions, agreements, or understandings may be and is to substantially lessen competition or to tend to create a monopoly in such cotton tie and jute bagging industry.

Therefore, notice is hereby given you, the said respondents, and each of you, that the charges in this complaint will be heard by the Federal Trade Commission at its office in the Commerce Building, in the city of Washington, D. C., on the 6th day of August, A. D. 1917, at 10.30 o'clock in the forenoon of said day, or as soon thereafter as the same may be reached, at which time and place you shall have the right to appear and show cause why an order should not be entered by the Federal Trade Commission requiring you, and each of you, to cease and desist from the violations of law charged in this complaint.

62 And you and each of you, will further take notice that within thirty (30) days after the service of this complaint you are required to file with the Commission an answer in conformity with Rule III of the Rules of Practice before the Commission.

In witness whereof, the Federal Trade Commission has caused this complaint to be issued, signed by its secretary, and its official seal to be affixed hereto, at the city of Washington, D. C., this 4th day of June, A. D. 1917.

By the Commission.

[SEAL.] (Signed) LEONIDAS L. BRACKEN,
Secretary.

63 Federal Trade Commission, Docket No. 12.

Section II. Answers of the several respondents.

64 Before Federal Trade Commission.

FEDERAL TRADE COMMISSION *v.* ANDERSON GRATZ AND BENJAMIN GRATZ, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitz-Hugh, and Alex. Fitz-Hugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and Charles O. Elmer, respondents.	Docket No. 12.

ANSWER.

In the matter of the alleged violation of section 5 of the act of Congress approved September 26, 1914, and section 3 of the act of Congress approved October 15, 1914.

65 Before Federal Trade Commission.

FEDERAL TRADE COMMISSION *v.* ANDERSON GRATZ AND BENJAMIN GRATZ, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitz-Hugh and Alex. Fitz-Hugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and Charles O. Elmer.	Answer.

The respondents, P. P. Williams & Co., above named, answer the complaint of the Federal Trade Commission in the above entitled matter as follows:

ANSWER TO COUNT ONE, PAR. TWO.

Respondents admit that they are copartners doing business under the firm name and style of P. P. Williams & Company, having their principal office and place of business in the city of Vicksburg and State of Mississippi.

Respondents admit that they are the selling and distributing agents of the firm of Warren, Jones & Gratz, and that they sell and distribute bagging manufactured by the American Manufacturing Company, and ties manufactured by the Carnegie Steel Company, but they deny that they sell and distribute the same principally to jobbers and dealers who resell to retailers, cotton ginners, and farmers, and respectfully affirm that they sell equally to retailers, cotton ginners, and farmers, as well as to jobbers and dealers.

66 Respondents affirm further that they do now sell, and have for several years past sold and distributed also, large quantities of bagging not made by the American Manufacturing Company, and not controlled by, nor bought from said American Manufacturing Company, or said Warren, Jones & Gratz; that they do now sell, and for several years past have sold, large lots of ties not made by the Carnegie Steel Company, and not bought from, nor sold by, said Warren, Jones & Gratz.

Respondents affirm further, that for two or three years past they have been advised from time to time by said Warren, Jones & Gratz to buy other brands of bagging than those made by the American Manufacturing Company, and other ties than those made by the Carnegie Steel Company, for the reason assigned by them, that the American Manufacturing Company was unable to get jute butts and other material for making bagging in sufficient quantities to supply the demand, and the Carnegie Steel Company were pressed with orders for other steel products and could not deliver ties as fast as, or in such quantities as they would be called for, and that they, the

said Warren, Jones & Gratz, did not wish to see bagging and ties fall into the hands of speculative dealers, who would then have it in their power to unduly advance the price to the consumer.

67 COUNT ONE, PAR. THREE.

Respondents deny that with the purpose, intent and effect of discouraging or stifling competition in interstate commerce, or in intrastate commerce, in the sale of such bagging, that they do now refuse, and for more than a year last past have refused to sell any of such ties, unless the prospective purchaser thereof would also buy bagging to go with such ties. On the contrary, respondents affirm that they have sold, and are now selling thousands of bundles of ties controlled by said Warren, Jones & Gratz to parties who bought ties only, and who, as far as they know, have not bought bagging from Warren, Jones & Gratz, or the American Manufacturing Company, but who are handling brands of bagging made by other manufacturers.

Respondents show also that they have sold large lots of bagging not made by the American Manufacturing Company, nor controlled by said Warren, Jones & Gratz, all of which was with the full knowledge of said Warren, Jones & Gratz.

Respondents show that they have been engaged for the past 27 years, in connection with their general merchandising business, in selling bagging and ties for use in the territory within the scope of their commercial activities, and that their many customers do largely rely upon them to meet their necessities. That, having it in their power to control for sale only a limited quantity of ties,

68 it is their policy, and always has been, to so regulate the sale of ties as to enable them as far as possible to meet the necessities of their patrons and customers. That they have at times, in pursuance of this policy, and in what they conceived to be their duty, refused to sell large lots of ties to dealers who did not desire to buy bagging, and who usually wished such large lots of ties to be shipped to them promptly. Such refusal being due to the fact that respondents feared the effect would be to have the supply of ties available to them thus absorbed to such an extent as would make it impossible for them to supply the legitimate demand and necessities of those dealers, retailers, ginners and consumers in their territory, whom they had been accustomed to supply, and whom they felt under obligations to protect. It should be borne in mind that a large percentage of buyers ship mixed carlots of bagging and ties, and if respondents should indiscriminately sell ties to every buyer, and in any quantity desired, the effect would be to render respondents unable to make sales of bagging to such mixed carlot buyers, and would put them to a large extent out of the bagging business. Such refusal, however, was not based upon the fact that these prospective buyers were handling bagging made by other manufacturers; on the contrary, respondents have at times

refused to sell ties to dealers who were handling bagging made by the American Manufacturing Co. In other instances, respondents have only sold bagging to purchasers who wished to buy both ties and bagging, advising such purchasers that they could not obtain ties to sell them.

69 Respondents affirm that they have had no intention of conducting their business except in a manner to meet the demands of their trade and to conserve the proper interest of themselves and of their customers.

COUNT TWO, PAR. TWO.

Respondents admit that they are copartners doing business under the firm name and style of P. P. Williams & Company, having their principal office and place of business in the city of Vicksburg, State of Mississippi, and that they are the selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging manufactured, as aforesaid, in interstate commerce. But respondents deny that they sell principally to jobbers and dealers who resell the same to retailers, cotton ginners and farmers, and respectfully affirm that they sell equally to retailers, cotton ginners and farmers, as well as to jobbers and dealers.

PAR. THREE.

Respondents admit that for more than a year last past, they have sold and made contracts for sale, and are now selling and making contracts for sale, of large quantities of such ties and such bagging for use, consumption and resale within the United States, but they deny that in so doing they have violated section No. 3 of the Clayton Act. Respondents deny that they have fixed, or are now fixing the price charged therefor, or discount from, or
70 rebate upon such price, on the condition, agreement or understanding that the purchasers thereof shall not use or deal in the goods, wares, merchandise, supplies, or other commodities of a competitor, or competitors, of these respondents, and they deny that the effect of such sales and contracts for sales made by them, maybe, and is to substantially lessen competition, or to tend to create a monopoly in such cotton tie and jute bagging industry. On the contrary, respondents affirm that no such condition, agreement or understanding as that alleged is now, or was at any time had with purchasers; that they have made and are making great numbers of such sales and contracts to purchasers who handle bagging made by other manufacturers than the American Manufacturing Company, and ties made by other manufacturers than the Carnegie Steel Company.

Respondents deny further that the fact that purchasers handle also other brands of bagging and ties had any effect or influence, with them in making sales, or fixing the price or discount, or rebate to such purchasers.

Respondents affirm that they try at all times, and have so done for the past several years, to sell bagging and ties to every dealer and to every retailer, ginner and consumer who handles these commodities, making no distinction and no difference between those who handle the goods distributed by said Warren, Jones & Gratz and those who handle other goods.

Respondents desire to give notice that they will appear in
71 person at the hearing at the Commission's office in the city of Washington on the 6th day of August 1917, and show that they have not been, and are not now using unfair methods of competition in interstate commerce in violation of the provision of section 5 of the Clayton Act, nor of section 3 of the Clayton Act.

Respondents respectfully invite the Commission to examine all their books, their records and their correspondence relating to their business in the sale of bagging and ties, and affirm that said records will substantiate the allegation made in their foregoing answer.

(Signed)

P. P. WILLIAMS & Co.
By W. H. FITZHUGH
Of the firm.

Vicksburg, Miss., June 30, 1917.

72 Before Federal Trade Commission.

FEDERAL TRADE COMMISSION
v.
ANDERSON GRATZ AND BENJAMIN GRATZ, COPARTNERS, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer, respondents. } Docket No. 1

ANSWER.

In the matter of the alleged violation of section 5 of the act of Congress approved September 26, 1914; and section 3 of the act of Congress approved October 15, 1914.

73 Before Federal Trade Commission.

FEDERAL TRADE COMMISSION
v.
ANDERSON GRATZ AND BENJAMIN GRATZ, COPARTNERS, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Ritzhugh and Alex. Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer. } Answer

The respondents above named answer the complaint of the Federal Trade Commission in the above entitled matter as follows:

To the first complaint that the respondents violated the provisions of section 5 of an act if Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the respondents answer:

They admit the facts alleged in paragraphs of said first complaint entitled paragraph one and paragraph two.

They deny both the allegations of fact and the conclusions therefrom contained in paragraph three.

Answering the second complaint that the respondents have been and are violating the provisions of section 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," the respondents allege:

74 They admit the allegations of fact contained in paragraphs one and two.

They deny each and singular the allegations of fact contained in paragraph three if said second complaint.

Wherefore, the respondents pray that the above complaints be both dismissed and that they have such other and further relief in the premises as may be just and proper.

(Signed) WARREN, JONES & GRATZ,
By ANDERSON GRATZ.

75 United States of America.

Before Federal Trade Commission.

FEDERAL TRADE COMMISSION, *v.* ANDERSON GRATZ AND BENJAMIN GRATZ, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and Charles O. Elmer, respondents.	Docket No. 12.

Separate answer of Charles O. Elmer to the complaint filed herein on the 4th day of June, 1917.

76 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

Complaint in the matter of the alleged violation of section 5 of the act of Congress approved September 26, 1914, and of alleged violation of section 3 of the act of Congress approved October 15, 1914.

FEDERAL TRADE COMMISSION *vs.* ANDERSON GRATZ AND BENJAMIN GRATZ, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., & Charles O. Elmer.	Docket No. 12.

Comes now Charles O. Elmer, respondent, and answering the first count of the complaint filed herein, admits that he is a resident of and does business in the city of New Orleans and State of Louisiana.

Further answering the first count of said complaint, respondent denies each and every allegation therein contained.

II.

For answer to the second court of said complaint this respondent admits that he is a resident of and does business in the city of New Orleans and State of Louisiana.

Further answering said count, this respondent denies each and every allegation therein contained.

(Signed) DAVIS BIGGS,
Attorney for Respondent, Charles O. Elmer.

77 Federal Trade Commission, Docket No. 12.

Section III. Agreed statement of facts entered into by and between the Commission and the respondents.

78 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION *v.* WARREN, JONES & GRATZ, ET ALS.	Docket No. 12.

AGREED STATEMENT OF FACTS.

It is mutually agreed between the Federal Trade Commission and the respondents through their attorneys, in the above styled cause for the purposes of this proceeding, that the facts hereinafter set forth be taken as proved:

(1) Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz, represent the Carnegie Steel Company in the sale of cotton ties.

(2) Anderson Gratz and Benjamin Gratz are vice president and treasurer, respectively, and are also directors of the American Manufacturing Company, which company manufacturers the American brand of cotton bagging.

It is further mutually agreed that nothing herein set forth shall be construed to prevent any of the parties from objecting to any or all the foregoing facts because of irrelevancy or immateriality.

(Signed) FEDERAL TRADE COMMISSION,
W. T. ROBERTS,
Special Attorney.
ALFRED P. THOM, Jr.,
Special Attorney.
THOMAS F. MAGNER,
Attorney for Anderson Gratz & Benjamin Gratz,
190 Montague St., Brooklyn, N. Y.
DAVIS BIGGS,
Of Counsel.
T. C. CATCHINGS,
Atty. for P. P. Williams Co., Vicksburg, Miss.

Federal Trade Commission, Docket No. 12.

Section IV. Report of the examiner, and proposed findings as to facts.

FEDERAL TRADE COMMISSION
vs.
ANDERSON GRATZ AND BENJAMIN GRATZ, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company and C. O. Elmer, respondents. | Docket No. 12.

REPORT OF EXAMINER.

The Federal Trade Commission having issued and served its complaint herein, wherein it alleged that it had reason to believe that the above-named respondents, Anderson Gratz and Benjamin Gratz, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, doing business under the firm name of P. P. Williams & Co., and Chas. O. Elmer, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearance by their attorneys at law, Biggs & Biggs,

General T. C. Catchings, and Honorable Thomas F. Magner, and formal hearings having been held before an examiner of the Commission; testimony being introduced on behalf of the Commission and the respondents, and argument of counsel having been made before said examiner, and the examiner having taken the proceeding under advisement, now on this the 18th day of September, 1918, on the pleadings and testimony the examiner makes his report and proposed findings as to the facts.

PROPOSED FINDINGS AS TO THE FACTS.

1. That the respondents, Anderson Gratz and Benjamin Gratz, doing business under the firm name and style of Warren, Jones & Gratz, a copartnership, having their principal office and place of business in the city of St. Louis, State of Missouri, are engaged in selling in interstate commerce, directly to the trade or
81 through their agents, the respondents, P. P. Williams & Co. and Chas. O. Elmer, steel ties made and used for binding bales of cotton, which ties are manufactured by the Carnegie Steel Company, of Pittsburgh, Pa.; and also are selling in the same manner jute bagging used for baling cotton, which bagging is manufactured by the American Manufacturing Company, of St. Louis, Mo. at its factories located at St. Louis, Brooklyn, New York, and Charleston, S. C.

2. That the respondents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners doing business under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the city of Vicksburgh, Miss., and the respondent, Chas. O. Elmer, located and doing business in the city of New Orleans, in the State of Louisiana, are selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute ties and bagging in interstate commerce to jobbers and dealers who resell same to retailers, cotton ginners, and farmers located in the cotton-growing States of the United States.

3. That the respondents, Warren, Jones & Gratz, were and are the general selling and distributing agents for the Carnegie Steel Co., located at Pittsburg, Pa., in the sale and distribution of steel ties manufactured by said company and used for the purpose of binding bales of cotton; and that the said firm of Warren, Jones & Gratz were and are the general selling and distributing agents of the American Manufacturing Company, the principal office of which company is in the city of Brooklyn, N. Y., for the sale and distribution throughout the cotton-growing States of the United States, of jute bagging manufactured and used for the purpose aforesaid.

4. That the said respondents, Warren, Jones & Gratz, were and are the sole selling and distributing agents of the Carnegie Steel Co. aforesaid, in the sale and distribution of its entire output of steel ties made and sold for the purpose of binding bales of cotton; and that the Carnegie Steel Company manufactures and sells an-

nually 75% of all the steel ties made in the United States for the purpose of baling cotton; and that the said company sufficiently dominates the cotton-tie situation in the United States to enable it to fix and control the price of such ties throughout the country; and that about 45% of the jute bagging required to bale the cotton crop of the Southern States is annually manufactured by the Ludlow Manufacturing Associates of Boston, Mass., and the remaining requirement for baling the cotton crop, namely, about 35%, is made up by the use of second-hand bagging and material called sugar-bag cloth. This cloth as well as the second-hand or rewoven bagging is in considerable demand by dealers and those engaged in baling cotton and is sold and distributed by dealers throughout the Southern States of the United States, in active competition with the jute bagging manufactured by the American Manufacturing Company
82 and sold and distributed by the said respondents, Warren, Jones & Gratz.

5. That within three years last past, respondents adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy ties from them without such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wish to buy steel ties from said Warren, Jones & Gratz, either through themselves or their general agents, P. P. Williams & Co. and C. O. Elmer, to also buy at the same time from said respondents a corresponding amount of American bagging manufactured by the American Manufacturing Company, of which company the said respondents, Warren, Jones & Gratz, were the sole selling and distributing agents in all the territory west of the Mississippi River where cotton is grown and where bagging and ties are sold for the purpose aforesaid.

6. That a great many merchants, jobbers, and dealers in bagging and ties throughout the cotton-growing section of the United States were many times unable to procure ties from any other firm or source except Warren, Jones & Gratz, or their said agents, P. P. Williams & Co. and C. O. Elmer, and that the said respondents sell and distribute such a large proportion of the entire amount of such ties manufactured and sold in the cotton-growing States of the United States that they, the said respondents, had what amounted to a monopoly of the cotton-tie business of the country, controlling and distributing such a large proportion of the entire output of ties that cotton growers found it impossible to bale the cotton grown and produced in the cotton-growing States without applying to and purchasing from said respondents and their agents almost the entire output of such ties manufactured by the Carnegie Steel Company. The dominating and controlling position occupied by the said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them American bagging, and in many instances said respondents refused to sell ties without the purchaser would also buy from them a cor-

responding amount of bagging, and said purchasers were oftentimes compelled to buy American bagging from said respondents in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

Respectfully submitted.

(Signed) GEO. MCCORKLE,
Examiner.

83 Federal Trade Commission Docket No. 12.

SECTION V. Respondent's exceptions to the proposed findings of facts made by the examiner.

84 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION
vs.
ANDERSON GRATZ AND BENJAMIN GRATZ, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, respondents.

RESPONDENTS' EXCEPTIONS TO THE PROPOSED FINDINGS OF FACT MADE BY HON. GEORGE M'CORKLE, EXAMINER.

The respondents, Anderson Gratz and Benjamin Gratz, except to the proposed findings of fact made by Hon. George McCorkle, examiner herein as follows:

They except to so much of the proposed finding of fact marked "1" as finds that the respondents, P. P. Williams & Company, were the agents of the firm of Warren, Jones & Gratz and represented them in the sale of steel ties used for binding bales of cotton and in the selling of jute bagging manufactured by the American Manufacturing Company. That there is no evidence to support the same and on the contrary that the evidence shows that the said P. P. Williams & Company sold during the times alleged in the complaint herein the goods to the American Manufacturing Com-
85 pany and were the agents of the American Manufacturing Company in making said sales.

The respondents except to so much of the proposed finding of fact marked "2" that finds that the firm of P. P. Williams & Company are the selling and distributing agents of the firm of Warren, Jones & Gratz, on the ground that there is no evidence to support the same.

The respondents except to so much of the proposed findings of fact contained in the proposed finding of fact marked "3" which

finds that said firm of Warren, Jones & Gratz are the general selling and distributing agents of the American Manufacturing Company for the selling and distributing throughout the cotton growing States of the United States jute bagging and used for the purposes aforesaid, on the ground that there is no evidence to prove the same, but on the contrary the evidence is that the said firm do not represent the respondents in the cotton States east of the Mississippi River.

The respondents except to so much of the proposed finding of fact marked "4" as finds that the Carnegie Steel Co., which manufactures and sells steel ties made for the purpose of binding the bales of cotton, sufficiently dominates the cotton tie situation in the United States as to enable it to fix and control the price of such ties throughout the country, and that about forty-five (45%) per cent of the jute bagging required to bale the cotton crop of the Southern States is annually manufactured by the Ludlow Manufacturing Associates of Boston, Mass., on the ground that the same is contrary and that there is no evidence to support the same.

The respondent excepts to the proposed finding of fact marked "5" as follows:

"That within three years last past, respondents adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy ties from them without such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wish to buy steel ties from said Warren, Jones & Gratz, either through themselves or their general agents, P. P. Williams & Co. and C. O. Elmer, to also buy at the same time from said respondents a corresponding amount of American bagging manufactured by the American Manufacturing Company, of which company the said respondents, Warren, Jones & Gratz, were the sole selling and distributing agents in all the territory west of the Mississippi River, where cotton is grown, and where bagging and ties are sold for the purpose aforesaid."

That the same is contrary to the evidence and on the ground that there is no evidence to support the same.

The respondents except to the proposed finding of fact marked "6" as follows:

"That a great many merchants, jobbers, and dealers in bagging and ties throughout the cotton-growng section of the United States were many times unable to procure ties from any other firm or source except Warren, Jones & Kratz or their said agents P. P. Williams & Co. and C. O. Elmer, and that said respondents sell and distribute such a large proportion of the entire amount of such ties manufactured and sold in the cotton-growing States of the United States, that they, the said respondents, had what amounted to a monopoly of the cotton tie business of the country, controlling and distributing such a large proportion of the entire output of ties that cotton growers found it impossible to bale the cotton grown and produced

in the cotton growing States without applying to and purchasing from said respondents and their agents almost the entire out-
87 put of such ties manufactured by the Carnegie Steel Company.

The dominating and controlling position occupied by the said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them American bagging, and in many instances said respondents refused to sell ties without the purchaser would also buy from them a corresponding amount of bagging, and said purchasers were oftentimes compelled to buy American bagging from said respondents in order to procure a sufficient supply of steel ties used for the purpose aforesaid."

That the same is contrary to the evidence and on the ground that there is no evidence to support the same. Dated September 25th, 1918.

Yours, etc.,

(Signed) THOMAS F. MAGNER,
Attorney for respondents. Office and P. O. Address, No. 32 Court Street, Brooklyn, N. Y.

To U. S. Federal Trade Commission, John J. Walsh, esq., chief counsel.

88 Federal Trade Commission, Docket No. 12.

Section VI. Commission's findings as to the facts and conclusions of law, dated October 12, 1918.

89 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission held at its office in the city of Washington, D. C., on the 12th day of October, A. D. 1918.

Present: William B. Colver, chairman; John Franklin Fort, Victor Murdock, commissioners.

FEDERAL TRADE COMMISSION *vs.* ANDERSON GRATZ AND BENJAMIN GRATZ, co partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, respondents.	Docket No. 12.

FINDINGS AS TO THE FACTS AND CONCLUSIONS OF LAW.

The Federal Trade Commission, having issued and served its complaint herein, wherein it is alleged that it had reason to believe that the above-named respondents, Anderson Gratz and Benjamin

Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, have been and now are using unfair methods of competition in interstate commerce, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that a proceeding by it in that respect would be to the interest of the public, and fully stating its charges in that respect, and the respondents having entered their appearance by their attorneys at law, W. H. and Davis Biggs, T. C. Catchings, and Thomas F. Magner, and the Commission having offered testimony in support of its charges in said complaint, and the respondents having offered testimony in denial of said charges in said complaint, and attorneys for the Commission and the respondents having submitted their briefs as to the law and the facts in said proceeding, and having also made oral argument before the Commission on the law and the facts in said case, the Commission makes this report and findings as to the facts, and conclusions of law:

90 FINDINGS AS TO THE FACTS.

Paragraph one: That Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, one of the respondents, is a copartnership whose principal office and place of business is in the city of St. Louis, State of Missouri; that P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, is a copartnership with its principal office and place of business in the city of Vicksburg, State of Mississippi; and that the other respondent, C. O. Elmer, has his principal office and place of business in the city of New Orleans, State of Louisiana; that all of said respondents are now, and were at all times hereinafter mentioned, engaged in commerce among the several States and Territories of the United States in the sale and distribution of steel ties, manufactured and used for the purpose of binding bales of cotton, and jute bagging, manufactured and used for the purpose of covering and wrapping bales of cotton; and that the respondents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer were and are generally selling and distributing agents for the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, in the sale and distribution of said articles of commerce; and that the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were

and are the general selling and distributing agents for the Carnegie Steel Company, located at Pittsburgh, Pennsylvania, in the sale and distribution of steel ties manufactured and used for the purpose aforesaid; and that the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the general selling and distributing agents of the American Manufacturing Company, the principal office of which is in the city of Brooklyn, State of New York, for the sale and distribution throughout the States commonly known as Cotton States, of jute bagging manufactured and used for the purpose aforesaid; and that Mente & Company, with offices in the cities of New York and New Orleans, and many other persons, sell and distribute a material known as sugar-bag cloth in interstate commerce throughout the cotton-growing States of this country, which material is used for the purpose of wrapping bales of cotton; and that the Carolina Bagging Company, located at Henderson, North Carolina, manufactures, sells, and distributes in interstate commerce, throughout the cotton-growing States of this country, what is known as rewoven bagging, and that said material known as rewoven bagging is manufactured and sold by other corporations and copartnerships in interstate commerce.

91 Paragraph two: That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wished to buy steel ties from the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, either through themselves or their general agents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, to also buy at the same time from said respondents a corresponding amount of American bagging manufactured by the American Manufacturing Company, of which Manufacturing Company the said respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were the sole selling and distributing agents in all the territory west of the Mississippi River, where cotton is grown and where bagging and ties are sold for the purpose of covering and wrapping bales of cotton.

Paragraph three: That the said respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the sole selling

and distributing agents of the Carnegie Steel Company of Pittsburg, Pennsylvania, in the sale and distribution of its entire output of steel ties made and sold for the purpose of binding bales of cotton; and that the Carnegie Steel Company manufactures and sells annually about 75% of all the steel ties manufactured for such purpose in the United States; and that the Carnegie Steel Company sufficiently dominates the cotton tie situation in the United States to enable it to fix and control the price of such ties throughout the country; and that about 45% of the jute bagging required to cover the cotton crop of the Southern States is annually manufactured by the American Manufacturing Company and about 20% by the Ludlow Manufacturing Associates of Boston, Massachusetts, and the remaining requirement for baling the cotton crop, viz, about 35%, is made up by the use of second-hand bagging and a material called sugar-bag cloth. This cloth, as well as the second-hand or rewoven bagging is in considerable demand by cotton balers and is sold and distributed by dealers throughout the Southern States in active competition with the jute bagging manufactured by the American Manufacturing Company and sold and distributed by the said respondents.

92 Paragraph four: That a great many merchants, jobbers, and dealers in bagging and ties throughout the cotton growing States were many times unable to procure ties from any other firm, except Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, or their said agents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, and that the said respondents sold and distributed such a large proportion of the entire amount of such ties manufactured and sold in the entire cotton growing section of the country, that they, the said respondents, had what amounted to a monopoly of the cotton tie business of the country, controlling and distributing such a large proportion of the entire output of cotton ties that cotton growers found it impossible to bind the cotton grown and produced in the Southern States without applying to and purchasing from the said respondents and their agents almost the entire output of such ties manufactured by the Carnegie Steel Company. The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Company and, in many instances, said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were oftentimes compelled to buy bagging manufactured by the American Manufacturing Company, from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

CONCLUSIONS OF LAW.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 1, 2, 3, and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers, and distributors of jute bagging, and against other dealers and distributors in the material known as sugar-bag cloth, and against manufacturers, dealers, and distributors of the bagging known as rewoven bagging and second-hand bagging, in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of section 3 of an act of Congress known as the Clayton Act.

(Signed) WILLIAM B. COLVER,
Chairman.

[SEAL.] JOHN FRANKLIN FORT,
VICTOR MURDOCK,
Commissioners.

93 Federal Trade Commission, Docket No. 12.

Section VII. Commission's order to cease and desist, dated October 12, 1918.

94 UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 12th day of October, A. D. 1918.

Present: William B. Colver, chairman; John Franklin Fort, Victor Murdock, commissioners.

FEDERAL TRADE COMMISSION *vs.* ANDERSON GRATZ AND BENJAMIN GRATZ, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, respondents.	Docket No. 12.

ORDER TO CEASE AND DESIST.

The Federal Trade Commission having issued and served its complaint herein, and the respondents, Anderson Gratz and Benjamin

Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, having entered their appearance by their attorneys at law, and the Commission having offered testimony in support of its charges in the said complaint, and the respondents having offered testimony in denial of said charges of the said complaint, and the attorneys for the Commission and the respondents having submitted their briefs as to the law and the facts in said proceedings, and the same having been argued before an examiner of the Commission and said examiner having made and presented to the Commission his proposed findings as to the facts, and the respondents having entered exceptions to said examiner's proposed findings as to the facts, and said exceptions having been duly argued before the Commission by counsel for the Commission and the respondents, and the Commission on the date hereof having made and filed a report containing its findings as to the facts and conclusions that the respondents have violated section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commis-
95 sion, to define its powers and duties, and for other purposes," which said report is hereby referred to and made a part hereof.

Therefore, it is ordered, that the respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, their officers and agents, cease and desist from requiring purchasers of cotton ties to also buy or agree to buy a proportionate amount of American Manufacturing Company's bagging, and further, that the respondents cease and desist from refusing to sell cotton ties unless the purchasers buy or agree to buy from them corresponding amounts of American Manufacturing Company's bagging, or any amount of cotton bagging of any kind.

By the Commission.

[SEAL.] (Signed) L. L. BRACKEN,
Secretary.

96 Federal Trade Commission, Docket No. 12.

Section VIII. Testimony, copy of which is in the hands of the clerk of the Circuit Court of Appeals for the Second Circuit.

97 Federal Trade Commission.

FEDERAL TRADE COMMISSION
vs.
WARREN, JONES & GRATZ. } Docket No. 12.

Jackson, Mississippi, October 19, 1917.
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99 Before the Federal Trade Commission.

FEDERAL TTADE COMMISSION
vs.
WARREN, JONES & GRATZ, ET AL. } Docket No. 12.

U. S. POST OFFICE BUILDING,
Jackson, Mississippi, October 19, 1917.

The above-entitled matter came on for hearing before Special Attorney George McCorkle, sitting as examiner.

Present: Special Attorneys W. T. Roberts and Alfred P. Thom, jr., on behalf of the Federal Trade Commission.

Present also: General T. C. Catchings, of Vicksburg, Mississippi, appearing for and on behalf of P. P. Williams & Company, and Davis Biggs, Esq., appearing for and on behalf of Warren, Jones & Gratz and Charles O. Elmer.

PROCEEDINGS.

Pursuant to notice heretofore given, the following testimony was taken in the above-styled proceedings:

100 The EXAMINER. Call your first witness.

(Reading of complaint and answers waived.)

Mr.. ROBERTS. It might be well to qualify all the witnesses present at the same time. I will ask Mr. Korndorffer, Mr. Lowenburg, and Mr. Wilkerson to stand and have the examiner qualify them.

(The above-named parties were thereupon sworn by the examiner.)

Whereupon G. O. Korndorffer was called as a witness and testified as follows:

Direct examination by Mr. ROBERTS:

Q. Where do you live, Mr. Korndorffer?

A. Natchez.

Q. What is the name of the firm with which you are connected?

A. Rumble & Wensel Co.

Q. What position do you hold in that firm?

A. Manager of the cotton department, and bagging and ties.

Q. How long have you been connected with the firm?

101 A. Thirty years..

Q. Has this firm been in the bagging and tie business during your entire connection with it or not?

A. Yes, sir; and before.

Q. What kind of business does Rumble & Wensel Co., conduct at Natchez?

A. General cotton business, bagging and ties, wholesale groceries, and seeds.

Q. Please state whether or not that business is with retail men, or do you deal——

A. Wholesale business exclusively.

Q. You do a wholesale business exclusively?

A. Yes, sir.

Q. How long have you been handling—what amount of bagging and ties do you handle annually?

A. We handle about 700,000 yards of bagging and about ten or fifteen thousand bundles of ties annually.

Q. Annually?

A. Yes, sir.

Q. You have been averaging that for quite a while?

A. Yes, sir.

Q. How many ties are in a bundle?

102 A. Thirty.

Q. How many ties are required to wrap a bale of cotton?

A. Six.

Q. How many yards of bagging?

A. It varies from seven to eight—from six to eight I would rather say.

Q. Where are the ties manufactured that are sold and handled in this territory along the Mississippi River?

A. We thought, or we do think, Pittsburg.

Q. And by whom?

A. By the Carnegie folks.

Q. Known as the Carnegie Steel Company?

A. Known as the Carnegie Steel Company; yes, sir. We used to get ties from the Pittsburg Company, but we have been unable to get any ties from them for the last several years. I think, at one time, we handled ties out of Atlanta—from the Atlanta Steel Co.

Q. Have you tried to buy any ties from them recently?

A. Yes, sir; in the last few years, and they refused to quote us.

Q. You tried to buy some from them in the last few years and they refused to quote you?

103 A. Yes, sir.

Q. Do you know why you could not buy from them?

A. No, sir.

Q. Do you know anything about the freight rates—whether or not the freight rates were more favorable to Pittsburg than to Atlanta?

A. That I could not say.

Q. Do you know anything about any ties being manufactured at any other points beside Atlanta and Pittsburg?

A. No, sir.

Q. Ever try Birmingham?

A. I think there was a firm there at Birmingham—Conner Wyman Co., I believe. They refused to quote us the last couple years.

Q. Refused to quote prices?

A. They did quote us several years back.

Q. Have you been able to get quotations from any manufacturer except from the Carnegie Steel Company within the last two or three years?

A. We have been unable to get quotations from them at all.

Q. From whom do you get quotations?

104 A. The only quotations we would get were from P. P. Williams & Company, of Vicksburg, and Chas. O. Elmer, of New Orleans, and I do not know whether it is the proper time to say this or not, but this season, when we were quoted at the time from both Chas. O. Elmer and P. P. Williams & Company, of Vicksburg, and only quoted a limited amount, and we knew it would not fill our requirements, we bought from Mr. Fitz-Hugh, of P. P. Williams & Company, the 4,000 bundles they quoted us, and then tried to buy 4,500 bundles of Elmer, which he quoted us, Mr. Elmer came back—"Warren, Jones & Gratz refuse to give you the ties we quoted, as you have had your allotment already from P. P. Williams & Company."

Q. How many had you had from P. P. Williams & Company?

A. We bought 4,000, and then 1,500 more.

Q. 5,500 bundles?

A. Yes, sir; it may be a few more or a few less.

General CATCHINGS. We object to this testimony. It is hearsay clearly.

The EXAMINER. Note the objection on the record.

Mr. BIGGS. Also, if the information is by correspondence, the correspondence should be produced, and not the witness' statement.

Mr. ROBERTS. If you have any correspondence, will you

105 give it to us?

The WITNESS. Yes, sir; I have them.

Mr. ROBERTS. We will examine them and see about them later.

By Mr. ROBERTS:

Q. Who was it that said that 5,500 bundles was your allotment; was that Mr. Elmer, you say, or P. P. Williams & Company?

A. Elmer.

Q. Was it true that that was the amount you were able to sell; you had been selling more than that, had you not?

A. Yes, sir; I suppose I have handled for Mr. Fitz-Hugh this season—on hearsay, I should say something—he could tell you better than I—but about 8,000 bundles, and we bought ties from other people besides.

Q. Have you been able this season—this cotton season—to secure as many ties as you wanted——

A. Yes, sir.

A. (Continuing) Or needed?

A. Yes, sir.

Q. Have you been able to secure as much bagging as you wanted?

106 A. Yes, sir.

Q. That is, since the cotton season opened this fall?

A. Yes, sir; Ludlow bagging——

Q. You buy the Ludlow bagging?

A. Yes, sir.

Q. Have you bought any American bagging this season?

A. No, sir; I bought it last season.

Q. I want to ask, Mr. Korndorffer, about the experience of your firm in buying bagging and ties a year ago—1916—during the cotton season?

A. We——

Q. What experience, if any, you had and whether or not you were unable, at any time, to secure bagging and ties, as your requirements demanded?

A. We have represented the Ludlow folks for, I suppose—well, I would say 40 years; at any rate the whole 30 years I have been connected with my firm, in Natchez; and last season, 1916, we had an awful time trying to get ties and we could not get any ties from any so-called independents, or Warren, Jones & Gratz, or P. P. Williams & Co., without buying American bagging, and you will see by the bill there [indicating] that we were forced to buy 100,000 yards of American bagging to get ties.

107 Mr. THOM: Is that the bill [exhibiting]?

A. Yes, sir.

By Mr. ROBERTS:

Q. You say that was in the fall of 1916?

A. No, sir; you see the bill there.

Q. It was during the time the bills bear date?

A. Yes, sir; in the summer time.

Q. With whom did you negotiate in this effort to secure ties in the fall of 1916?

A. With pretty near, I should say, every tie concern in this country. It was utterly impossible. We could not get any ties in any manner, shape, or form without buying the American bagging.

Q. Did you try a great many places to get your ties?

A. Yes, sir.

Q. From whom did you finally buy the ties?

A. From P. P. Williams & Company of Vicksburg.

Q. How many did you get?

A. Well, I think the first order was for 5,000 bundles to go with the bagging.

Q. How much bagging were you required to buy in order to get the 5,000 bundles of ties?

108 A. 100,000 yards of bagging.

Q. At that time state whether or not you were already supplied with bagging?

A. We were, sir.

Q. What kind of bagging did you have on hand?

A. Ludlow bagging, manufactured in Boston, Mass.

Q. How did the Ludlow bagging compare with the American bagging, at that time, as to quality and price?

A. Well, in our section of the country it has a preference over any other bagging.

Q. Which has the preference?

A. The Ludlow.

Q. How did the price compare with the American bagging?

A. Identically the same.

Q. Do you remember what this bagging cost you delivered in Natchez at the time you bought it in 1916 from Mr. Williams & Company?

A. I think it was 12 and 1-16th or 12 and 1-8th—the bill shows I really never looked it up.

Q. How much did the Ludlow bagging—how much Ludlow bagging did you have on hand at the time you bought this?

109 A. 300,000 yards.

Q. Was that all you needed for that season?

A. No, sir; we bought more afterwards. We never buy the full season's requirements at the opening of the market.

Q. At the time you bought the American bagging from P. P. Williams & Company did you have as much of the Ludlow bagging on hand as you wanted?

A. No, sir; but we had bought our usual requirements, which were 300,000 yards, when the market opened, and of course getting the American bagging—being forced to take that—made us have a surplus of bagging of that quality needed.

Q. State whether or not you were able during that season to dispose of all the bagging you had on hand?

A. All except the American bagging.

Q. How much of that did you carry over into this present season?
A. About 50,000 yards that we are selling now, and still have some on hand.
Q. Would you have bought that American bagging, Mr. Korndorffer, but for the fact that you were forced to buy it in order to get ties?
A. No, sir.
110 Q. Does your trade, generally, prefer the Ludlow bagging to the American bagging?
A. Yes, sir.
Q. Do you know the reason for that preference?
A. Because it is closer woven. The weight is the same but it is closer woven and brighter goods, and the people have been used to that bagging for a very long time.
Q. I believe you stated at the time you bought these 100,000 yards from P. P. Williams & Company, that you also had on hand more than 300,000 yards of Ludlow bagging?
A. 300,000 yards we contracted for.
Q. State whether or not you had to carry over any of the Ludlow bagging last season.
A. No, sir; not a yard.
Q. You disposed of all of it?
A. Yes, sir; there may have been a scattering roll here and there.
Q. You made other purchases besides that?
A. Yes, sir; afterwards.
Q. What did the ties cost you last season, delivered at Natchez—those you bought from Messrs. P. P. Williams & Company—do you remember?
111 A. I think I have the bill there—I believe $1.45 or $1.75 (after examining some papers)—I do not think I have a bill, sir.
General CATCHINGS. Are you going to put all of this correspondence in?
Mr. ROBERTS. This he has examined?
General CATCHINGS. Yes.
Mr. ROBERTS. I do not know, sir.
The WITNESS. I do not believe I have a bill.
Mr. THOM. We are going to put in what I have shown you.

By Mr. ROBERTS:

Q. You do not remember what the prices were last season—in a general way you remember, don't you, Mr. Korndorffer, how the prices ruled through the season of 1916.
A. I think it was somewhere in the neighborhood of $1.75.
Q. That was the delivered price?
A. Yes, sir.
Q. You have no bills here by which you might refresh your memory, have you?

A. No, sir.

Q. What are the prices this present season?

112 A. They were, I think, $2.21 delivered.

Q. Any change or advance in the price of bagging this season?

A. Yes, sir; bagging was up about two cents a yard—no, about a cent and a half—about a cent and a half.

Q. I will get you to look at these two letters, Mr. Korndorffer, and see if those are the ones you received from P. Williams & Company and C. O. Elmer.

A. Yes, sir; that was this season.

Q. Did you receive them about the time those letters bear date there?

A. Yes, sir.

Q. By due course of mail?

A. Yes, sir.

Q. I will get you also to look at this letter [handing letter to witness] and state whether or not you received it—this telegram.

A. Yes, sir.

Q. And whether or not you received it by the regular method of delivering telegrams?

A. Yes. sir.

Q. From Messrs. Warren, Jones & Gratz?

113 VICKSBURG, MISS., 7-11-1916.

RUMBLE & WENSEL CO.:

Mail us proceeds in New York exchange—please. Bought of P. P. Williams & Company. Terms cash. Shipped to Natchez, Miss., prepaid.

1400-50's Amer. 2# bagging, 70,000.			12-3-16	8,531.25.
M. K. & T.	car	72878	300	Rls
N. Y. C. & H.	"	94534	300	"
M. C.	"	47898	400	"
M. P.	"	36495	400	"

Shipped direct. ---------- JH.
Bs-L attached.

VICKSBURG, 7-8-1916.

RUMBLE & WENSEL CO.:

Bought of P. P. Williams & Company. Terms cash. Shipped to Natchez, Miss., prepaid.

600-50's Amer. 2# bagging, 30,000. 12-1-16 3,618.75.

Cars C. & E. I. 60103 and Erie 103756------
Shipped direct. ---------- JH.

114 P. P. Williams, Memphis. W. H. Fitz-Hugh, Vicksburg.
Alexander Fitz-Hugh, Vicksburg.

P. P. WILLIAMS & COMPANY,
WHOLESALE GROCERIES AND PROVISIONS,
Vicksburg, Mississippi, 5-29-17.

EUMBLE WENSEL CO.,
Natchez, Miss.

GENTLEMEN: Confirming our conversation by telephone to-day, we are going to divert to you two cars containing 1,900 bundles each of ties, which are now en route to us at Vicksburg. We will bill these to you at $2.07 f. o. b. Pittsburg. This looks like 1 cent a bundle over the opening price, but we are not making anything on you, and are diverting the ties sold to other parties, which it will cost us one cent a bundle additional to replace. In other words, we will have to give them July shipment at the June price.

We are glad to have been able to help you in the matter.

Yours, very truly,

P. P. WILLIAMS & COMPANY.

115 N. B.—Please drop any correspondence with Elmer, and treat what we have done in the matter confidential."

Mr. ROBERTS. I believe you may examine the witness. We will will offer these papers [exhibiting] after we get through with Mr. Korndorffer.

Cross-examination by General CATCHINGS:

Q. Mr. Korndorffer, you say you only dealt by wholesale?

A. Sir?

Q. I understood you to say you only dealt by wholesale.

A. By the term "wholesale" I mean to sell goods in the country, in a wholesale way. I suppose bagging, you would call that all wholesale, even a roll, or two rolls, or three rolls?

Q. Did you sell directly to the planters?

A. Yes, sir; to the ginners.

Q. Do you call that wholesale?

A. Yes, sir; bagging and ties. If I sell groceries in broken packages, I would call that retail.

Q. If a man wanted 50 yards of bagging and you sold that to him, you would call that wholesale?

116 A. Yes, sir.

Q. I am simply trying to get your idea of "wholesale." Did you sell in large quantities to merchants, or others, who themselves might sell it again?

A. Well, no; we sold to large ginners, in 1,500 yard lots and to store keepers. They may in turn—I do not know—sell to ginners.

Q. I was just trying to get your meaning of the word "wholesale." Was there any difference in the price of Ludlow bagging and American bagging in 1917?

A. No, sir.

Q. Was there any difference in the price in 1916?

A. No, sir.

Q. Has there ever been any difference in price in any years, within your knowledge?

A. Well, I cannot go way back, but I believe there was in years back. At one time the Ludlow people would be higher than the American, and at other times the American people would be higher that the Ludlow, but very little. They did not vary very much—somewhere around 1-8th or 1-4th.

Q. The American bagging is just as good for practical purposes as the Ludlow, is it not?

117 A. In some sections, where I suppose they have been used to American bagging, they would not handle any Ludlow; the same way in some sections where they handled Congo bagging, which is an imported cloth, they would not use either.

Q. I mean for practical purposes—they cover the cotton just the same?

A. I would not consider it as good as Ludlow, where the cotton is to be exported, because it is a better mesh. The weight is the same. They both have two pounds and two and one-quarter pound.

Q. Where did you get your bagging this year?

A. From the Ludlow Mfg. Company in Boston.

Q. Where did you get your ties this year?

A. From P. P. Williams & Company.

Q. Did you get all the ties you needed for your business?

A. Yes, sir; we did this year.

Q. Did you get all the ties you wanted last year?

A. We had a scrap in getting them last year.

Q. Did you get them as the result of that—all you wanted?

A. By awfully hard work. We had to do a lot of fighting.

Q. But you did get them?

118 A. Yes, sir.

Q. From whom did you get them?

A. We got some from Mr. Fitz-Hugh of Vicksburg, some from Elmer, and some from Graves of Houston, Texas.

Q. Who was Graves of Houston, Texas?

A. I do not know them at all, sir.

Q. You bought from them and did not know them?

A. No, sir.

Q. You do not know whom they represented, or for whom they distributed?

A. No, sir; the ties were ordered and the bill of lading came attached.

Q. How much did you get from them?

A. I think only one car.

Q. All the balance you got from P. P. Williams & Company of Vicksburg and Elmer of New Orleans?

A. Principally of P. P. Williams & Company of Vicksburg.

Q. You won out in the scrap and got your ties?

A. But we got a black eye.

Q. But you got your ties?

A. Yes, sir; but we had a hard time last year. They were very good this year.

119 Q. Is it not a fact that the tie market was a pretty hard one last year, generally—was it not pretty hard to supply the demand?

A. From all the correspondence, I would say it was not as hard as this year. We wrote all around the world to get ties and they refused to quote us any price.

Q. Did you try last year to get ties from these different places you mentioned?

A. Yes, sir.

Q. And they would not sell you?

A. No, sir.

Q. Did they give you any reasons for not selling?

A. No, sir; they just said they did not have any ties at all.

Q. What is your opinion about it?

A. Sir?

Q. What is your opinion about it—why do you think they would not quote you any prices?

A. My dear sir, that I could not say—none of them have told me.

Q. Have you no idea?

A. No, sir.

120 Q. They were in the business of selling ties, and yours was a reputable firm—there must have been some reason for not selling the ties?

A. They have sold us ties in large lots of 25,000 bundles. Mr. Brown did that himself.

Q. Where did they come from?

A. Pittsburg.

Q. I am talking about other people—those representing Williams & Company—those you named?

A. No, sir; it just sifted down that we could not get a tie from any place in the world. They figured we were a stepchild, and not entitled to as much ties as Mr. Fitz-Hugh; maybe they wanted to make Vicksburg a distributing point. Of course, that point would not bother us as long as the price was all right.

Q. Do you know whether the other dealers had difficulty in being supplied with ties last year?

A. Yes, sir; Mr. Lowenberg, who handles bagging and ties, was in the same fix I was.

Q. Don't you know, as a matter of fact, there was a great deal of difficulty in furnishing the trade with ties last year?

121 A. I do not think so, sir.

Q. When you sell ties, do you try to sell bagging along with the ties?

A. Well, it is customary to sell so much wrapping; a person will say "I want bagging and ties for 1,000 bales" and we have to figure

that out. It is customary to always sell ties with bagging that wa to the ginner.

Q. That is what I understand.

A. Of course, some people buy ties without any bagging whic we sell them.

Q. Is it not the rule that a man who wants ties wants bagging an you sell them together?

A. Well, that is a rule with a little fellow like us, who is not i the absolute tie or bagging business separately. It is all based o so many yards and so many ties for so much wrapping. When yo order so much wrapping——

Q. Is it not a fact when you order so much wrapping and so man ties you expect them to go together?

A. Yes, sir.

Q. You buy enough bagging to meet the ties you buy?

A. Yes, sir.

122 Q. Your purpose is to sell bagging and ties, because yo are in the business of selling bagging and ties——

A. I handle together the bagging and ties.

Q. That has been my understanding.

A. Of course, if a man wants bagging—we are shipping o bagging now without the ties, and maybe next week two or thr will want ties, and we will sell them ties without the bagging. O course, if a man came to me and wanted a thousand or two thousa bundles of ties, I could not supply them, because we have not g them or I would have a hard time getting them.

Q. If you had them, would you be disposed to let them go to o man unless he took bagging also?

A. Yes, sir; we count up our stock and see how we are fixed. O course, in the first part of the season, very near everybody bu bagging and ties together. They never ask for them separately.

Q. That is a general rule, is it not?

A. Yes, sir; that is a general rule.

Q. And that is your general rule, is it not?

A. Oh, we can not tell a man he must do this or do that.

Q. I mean when you buy yourself, you aim to buy bagging an ties together?

123 A. No, sir; we do not; we try to buy bagging at one pla and ties at another.

Q. I did not mean that. You try to get enough bagging an enough ties to go hand in hand together to supply the trade?

A. We never figure it that way. Since ties are so hard to get, w try to get them, because we can always get bagging from the Lo low people.

Q. They can not always get ties?

A. They do not handle ties; that is, not to my knowledge.

Q. Did you have any trouble with bagging and ties in 1915?

A. Well, I can not go back that far.

Q. That is not so far; that is only two years ago.

A. Well, we have had trouble for three or four years on the tie proposition.
Q. From whom did you get your ties in 1915?
A. Ludlow.
Q. From whom did you get your ties in 1914?
A. I suppose we bought from the same people. I would not be sure—from Vicksburg, or Warren, Jones & Gratz, or Elmer.
Q. From whom did you get your bagging—Ludlow?
A. Yes, sir; we have never handled——
Q. Always got your bagging from Ludlow?
A. Yes, sir.
Q. Going back as far as 1910?
A. Yes, sir.
Q. You think you got your ties from Williams & Company as far back as that?
A. I will not be certain as to the years 1913, 1914, or 1915, but I am quite sure it was either Williams & Company, Warren, Jones & Gratz, or Elmer. We have bought from Elmer a great many ties, especially when the old gentleman had charge of the business.
Q. Have you ever used any ties except the Carnegie ties?
A. Well, we bought—I could not tell you exactly the year, but it was several years back we bought from the Pittsburg Steel Company, from Johnson of Memphis. I do not known whether that was away back in 1907 or 1908, but it was somewhere in there.
Q. You have always been able to get the ties you needed in your trade?
A. By hard work; yes, sir.
Q. You always got them?
A. We got enough to carry us through. We would have liked to have more ties and have been a little larger in the tie business, but it was just so hard to handle that we had—really it was so bad we were thinking of getting out of the bagging and ties business altogether.
Q. Did you make the complaint to the Trade Commission which resulted in this hearing?
A. No, sir.
Q. Did you talk to anybody on this subject?
A. Mr. Roberts came to see me.
Q. Since this proceeding began?
A. No, sir; some time during the summer.
Q. Can you state who manufacture bagging in this country?
A. The only two I know are the American Bagging Company and the Ludlow folks.
Q. You do not know any other?
A. No, sir.
Q. Can you state who make ties in this country—can you give the names of the different manufacturers of ties?

A. General, really I could not tell you except that I have always heard that the manufacturers are the Pittsburg Steel Com-
126 pany and the Carnegie folks, and the Independent people like Connor Wyman Company and the Atlanta Steel Company, from whom we have never been able to buy any ties.

Q. Do you know what proportion of the total number of ties the Pittsburg Steel Company manufactures?

A. No, sir.

Q. You do not know what proportion of the whole the Carnegie people manufacture?

A. No, sir; I am not familiar with the manufacture of ties at all.

Q. Do you know any dealer—I am not talking about brokers, but dealers like yourself—do you know of any dealer who deals solely in ties, without bagging?

Mr. THOM. I did not catch the question.

General CATCHINGS. I asked if he knew of any dealer who deals only in ties, not dealing in bagging also.

The WITNESS. No, sir.

General CATCHINGS. Do you know any dealer in your territory who sells bagging exclusively without ties?

A. No, sir; that is, I suppose any dealer would be like myself—if a man wanted ten bundles of ties he would give them or ten rolls of bagging.

127 Q. I did not ask that; I asked if you know of any dealer who deals only in bagging.

A. No, sir.

Q. Just as I asked about ties, if you knew any dealer who deals only in ties?

A. No, sir; I suppose they go together, just like a dealer in cups and saucers; you buy them together. You would not buy a cup and then buy a saucer.

Q. What time was it in 1917 that you purchased your ties from Williams & Company?

A. It was in May—May 17th or 18th, somewhere around there, sir.

Q. In May, 1917, when you bought your ties from Williams & Company, do you remember that when Mr. Fitz-Hugh asked you to buy some American bagging, you said you had carried over a part of that which you had bought the preceding year?

A. Yes, sir.

Q. Do you remember that he told you that he would be glad to take them off your hands, and you said no, you would keep them and sell them?

A. Yes, sir; that is absolutely the truth.

Q. That happened?

128 A. Yes, sir.

Q. Have you any letter from Williams & Company, in the summer of 1916, or at any time in 1916, showing that they refused to sell you ties unless you also bought bagging from them?

A. Pretty nearly all that business is done over the telephone. You are speaking of 1916?

129 Q. Yes, 1916.

A. I have not the letter here, but I am quite sure that I can produce the letter at some other time, where Mr. Williams says that Warren, Jones & Gratz do not want to sell ties without bagging. I have not that with me, but I am quite sure that is about the gist of the letter. But, General, most of that business is done over the telephone and very little confirmed. We buy and sell over the telephone.

Q. Do you say, then, that Williams & Co. told you over the telephone——

A. Yes, sir.

Q. (Continuing)—that they would not sell you ties unless you bought bagging?

A. The American bagging.

Q. You affirm that?

A. Yes, sir.

Q. That was over the telephone?

A. Yes, sir.

Q. But you have no letter to that effect?

A. No, sir; I have no letter that I know of right now. I may be able to dig one up, but I doubt it.

130 Q. You stated at some time, the date of which I cannot remember—and I ask you to give it if you can—that you bought 25,000 to 30,000 bundles of ties in a barge, through Mr. Brown, representing Warren, Jones & Gratz?

A. Yes, sir; that is quite a good while back.

Q. Can you give the date of that?

A. No, sir; that would be a way back.

Q. How far back was that?

A. Before the boll weevil came, and that has been with us seven years.

Q. That was before the advent of the boll weevil?

A. Yes, sir.

Q. At any rate, whatever the date was, were you required to purchase American bagging as a condition——

A. No, sir.

Q. Were you required as a condition of getting ties in 1915, 1914, and 1913, to buy American bagging?

A. No, sir.

Q. I think you said, during those years you were selling Ludlow bagging.

A. Yes, sir.

Q. And bought ties independently?

131 A. Well, during those years even—not this year, but during those years—we handled a little of pretty nearly every kind of bagging towards the end of the season. It was a question of getting cloth quick. We ran out of bagging and took anything we

could get. That season, we handled a little of Calcutta, a little American, and I think a little Union.

Q. My point was whether you were required to buy bagging as a condition to getting ties?

A. No, sir; we were only required to buy bagging last year—1916.

Q. 1916 is the only year you say you were required to buy it?

A. That was the only year; yes, sir.

Q. Why didn't you buy your ties, or try to do it from the Ludlow people in 1916; you had been handling their bagging a long time?

A. Well, simply because they don't manufacture ties and don't handle ties.

Q. Do you state that as a fact that they do not handle ties?

A. That I could not say was a positive fact, because I
132 do not know. They may handle some ties in a way.

Q. Did you make an effort to get ties from them?

A. Yes, sir—no; I did not make an effort to get ties from them, but I made an awful effort——

Q. To get them from Williams & Co.?

A. No, sir; from the Ludlow people, to try to straighten out the tie folks to get some ties. We appealed to them for help, as we were getting desperate. It looked like we were not going to get any ties at all, and we were handling 700,000 yards of their cloth, and we thought that they might have some influence with the tie people, so we appealed to them.

Q. How many yards did you say you were handling in 1916, of bagging?

A. Last year, 1916, I suppose we handled about one-half million yards.

Q. How many did you buy from Williams & Co.?

A. Of bagging?

Q. Yes.

A. One hundred thousand yards.

Q. What you bought from them was a relatively small part of the bagging you handled?

A. Well, sir, I would not have bought that bagging unless I was obliged to do so.

133 Q. But it was a relatively small part of the whole amount of bagging you handled?

A. I thought to put out $12,000,000 was a big part.

Q. That is not the question. You bought 100,000 from Mr. Williams and handled altogether one-half million?

A. I would not call it a small part.

Q. Was it 20%—that was about the percentage of the total amount you handled, that you purchased from them?

A. It figured about that.

Q. One-fifth of the bagging you handled you bought from Williams & Co., and you could have handled that without having to carry over that Ludlow bagging?

A. How is that?

Q. You could have handled that without having to carry over that Ludlow bagging; Williams & Co. offered to——

A. I never carried over the Ludlow bagging.

Q. That was in 1917. That is true. How long since you bought any ties except the Carnegie ties?

A. My dear, sir, I can not, on this stand, swear I bought any Carnegie ties. I do not know what ties I bought.

Q. You bought ties from Williams & Co., Warren, Jones & Gratz, and from Elmer?

134 A. I do know whom they represent. They are supposed to represent the Carnegie folks.

Q. Well, suppose for the purpose of this question they were Carnegie ties; upon that supposition, how many ties did you handle except Carnegie ties within the last few years?

A. I only judge—I bought from those people, except a few bundles from Mr. Graves. I handled all Carnegie ties.

Q. That is what I understood you to say. I will ask you again: Don't you know the Ludlow people did sell ties in 1916?

A. No, sir; I do not.

Q. Did you ask them to sell you ties in 1916?

A. In 1916?

Q. Yes.

A. Yes, sir—no, sir; I did not ask them to sell us ties, but we asked them to try to get us some ties.

Q. What did they say?

A. They stated they were not in the tie business, and that they had to have a few bundles of ties for some Texas people and for us to be patient and they thought we would get some ties. They told us the same thing this year. We appealed to them to try to

135 help us, and they gave us the name of Conner Wyman, in Birmingham, the Atlanta Steel Co. at Atlanta, and the Pittsburg Steel Co., of Pittsburg. They all refused to quote us. There [exhibiting] are their replies.

Q. Your business has been of about the same magnitude, has it not, for the last five or six years?

A. A little larger this year on account of the cotton crop that has to be wrapped. The bagging and tie business—General, we do not know where we are at. We generally buy at the opening of the season about 300,000 yards. We do not know until the month of August has passed, whether we need more bagging and ties.

Q. Leaving out this year, when the cotton crop has been unusually good, has not your business been about the same—in the years 1914, 1915, and 1916?

A. Yes, sir; it was a little larger in 1915 than it was in 1913, 1914, and 1915.

Q. So during those years you have handled about the same quantity of bagging and the same quantity of ties, running back for quite a series of years?

A. Yes.

Q. This telephone conversation that you have spoken of as coming off in 1916, in which you say Williams & Co. declined
136 to sell you ties unless you bought bagging, was that in May? That was before you managed to get some ties, was it not?

A. That was at the opening of the bagging and tie market. They both open at the same time.

Q. That was before you bought any ties at all? You bought a lot of ties from them in May, as I understand?

A. I bought the bagging and ties together at the same time.

Q. Was that May or June?

A. I think last year the market opened in June and this year in May.

Q. At all events, the telephone conversation occurred, as I understand, before you finally negotiated for ties in 1916, whether it was June or May?

A. I did not quite catch the point there.

Q. You said that they refused to sell you ties unless you would buy the bagging?

A. Yes, sir.

Q. In 1916?

A. Yes, sir.

Q. You did buy the ties?

137 A. No, sir; I did not buy ties. I had to buy the bagging to get the ties.

Q. Well, let it go that way. Before you bought the ties and bagging, then, if you choose to put it that way—but that is not the point I had in mind—this conversation over the telephone occurred before you bought the bagging and the ties?

A. Yes, sir; certainly it had to occur before we made the trade. We had to talk about it.

Q. I will ask you, if, on the 23rd of August you did not buy, 100,000 bundles of ties?

A. Yes, sir; we got ties afterwards.

Q. Was any condition made then about buying bagging?

A. No, sir.

Q. This condition had reference only to the first purchase?

A. Yes, sir; the first trade.

Q. And you bought ties afterwards?

A. Yes, sir.

Q. And without having to buy bagging?

A. Yes, sir.

Q. That condition related only to the first purchase?

138 A. Yes, sir; and if Mr. Fitz-hugh will recall, he fussed a little about it at first, but he said that he would let us have the ties.

Q. That was the only time, as I understand you, that you were ever required by Williams & Co. to buy bagging as a condition of getting ties?

A. Yes, sir.

Q. That was in June, 1916?

A. That is it exactly, sir.

Q. Now, then, you say because you were required to buy that bagging you had more bagging than you could dispose of in your trade in 1916.

A. Yes, sir.

Q. And had to carry over some?

A. Yes, sir.

Q. How much did you carry over?

A. About 50,000 yards.

Q. And you say Mr. Fitz-hugh offered to take that off of your hands, but that you declined to do it?

A. That was this season. I never argued that point with him as to what he would pay me, but bagging had advanced.

Mr. Biggs. You made money by holding it?

A. No, sir; it was not because I would make money.

139 By General Catchings:

Q. It was not a good thing to sell at that time?

A. No, sir; not to Mr. Fitz-hugh.

Q. Of course, I am not denying that you had a right to hold it. It was not a good money proposition to turn that back to Mr. Fitzhugh?

A. The money feature was not the consideration. It was the necessity for having some bagging.

Q. A man has a right to get what he can for his stuff. I am not criticising you for that. If I had it I would hold it and if I thought it was going up, I would hold on to it longer.

A. We never tried to hold any bagging over. It is a bad proposition.

Q. Can you give us an idea of the relative size of the cotton crop, beginning with 1916 and going back several years? Of course, I do not mean linters; I mean cotton bales.

A. I could not tell you in exact figures. It was 12,000,000 last year; the year before it was 11,000,000 something; and the year before that I think it was 16,000,000. I don't know the exact figures.

Q. Oh, yes; it varies from year to year?

140 A. Of course; certainly. The past two crops have been relatively small. We had a crop a little over 16,000,000 bales a little over three years ago.

Q. Mr. Korndorffer, making ties is like your buying bagging and ties, I suppose the manufacturer of ties tries to find out, as well as he can, how many ties will be needed, and he keeps his eye on the cotton crop just as you do?

A. Yes, sir.

Q. As the crop varies so greatly, as you have shown between twelve and sixteen million, the tie manufaeturer is kept pretty busy, is he not, in knowing what his output should be, in order to enable him to meet the demands for the coming year?

A. I am not in the tie business.

Q. Well, is not that common sense?

A. I am not in the tie business, but I think anybody in the manufacturing business generally ought to figure in a way all of the time for a little over to supply the wants of the people, if the crop happens to be a little larger, I do not think the ties would spoil if the crop happened to be a little smaller.

141 Q. I suppose they do that. That is not an answer, though to my general question, if a tie manufacturer, like any other prudent business man, does not have to know how many ties will be needed, he does not want to manufacture an over supply, because that would incur a tremendous expense.

A. I think, in a situation of that kind, a little fellow like us should not be figured in what a mill should make and what a mill should not make. I can see what you are trying to draw out, but I do not believe that question is really right.

Q. Why isn't it right?

A. Because you are trying to draw right out of me that there was not enough ties to go around on account of the size of the crop. I am no judge of that. I think the tie manufacturers and bagging manufacturers should have—the Ludlow people have never, in the biggest demand, and the biggest crop, refused to give us bagging. They will tell us, "Bagging is a little scarce, but we will supply your wants."

Q. You are mistaken. I was not trying to bring that out. I was trying to bring out what you will see is correct, that the tie
142 manufacturers, like all other people who produce, aim not to overproduce because it is expensive to overproduce.

A. That is all right; I agree with you.

Q. And at times, they may miscalculate, and there may be a shortage of ties?

A. That is all right, but the tie season opens in May and June, when they do not know whether there will be a big crop or a little crop in that year. There may be 32 or 34 million acres, which will turn out 16,000,000, and again, turn out only 12,000,000.

Q. But he is manufacturing all of the time?

A. Oh, he is supposed to make a moderate lot to supply ties to meet the crop, and I think the tie manufacturer ought to, if he sees in August that the crop is going to be very big—he ought to go to work and make more ties.

Q. Have they not done that? Have they not always furnished all the ties the crop needed?

A. Yes, sir; I think so, I have always been able to get them.

Q. But may there not be times when the crop is pretty close up on the supply of ties?

A. Well, this season we could not get as many ties as
143 we needed. They gave us them on installments.

Q. The manufacturer of ties manufactures along with the best lights before him?

A. I suppose so.

Q. Mr. Korndorffer, didn't you, in 1917, want all of your ties in June and July?

A. Yes, sir.

Q. Didn't Williams & Co. inform you by letter that they were unable ot get more than a limited number from the Carnegie Steel Co. and for that reason could not ship them all out in June and July?

A. Yes, sir; they wrote us that.

Q. Didn't they say to you that the mills were then making ties as fast as they could?

A. I do not remember that letter.

Q. The letter of May 26th?

A. I only brought just a few letters. I did not bring all of the correspondence I had with reference to bagging and ties.

Q. I have a carbon copy of that letter.

A. However, I remember distinctly—it is not far back—
144 Mr. Fitz-hugh could not give me the ties I wanted. Here it is here [exhibiting]—"In regard to ties, we can not promise to ship you the whole 5,000 bundles in July. We promise to ship 3,000 and give you the balance as fast as possible, not later than October." It is about the same thing. We had them strung out. I said a while ago we got them on the installment plan.

Q. But didn't he give you as a reason for it that the Carnegie Steel Company could not turn them out; that they could only get a limited supply from the Carnegie people?

A. I have no recollection of that, but Mr. Fitz-hugh you wrote us that letter and we have it.

Q. Didn't he also say that the Government was making great demands on the tie manufacturers, and the Government's orders would have to be taken care of first; didn't he also say that you could not possibly need all of your ties in June or July, and would let you have them from time to time later?

Mr. ROBERTS. If that appears in the letter, I object to asking Mr. Korndorffer that, because you can produce the letter.

General CATCHINGS. I have no objection to introducing the letter.

Mr. ROBERTS. I think he should be required to produce
145 the letter and let the letter speak for itself.

General CATCHINGS. Mr. Korndorffer has the original. I have a carbon copy of the letter. I will ask you, Mr. Korndorffer, to file, if not now, later, a letter written on the 26th of May, 1917, to you by P. P. Williams & Co.

The WITNESS. Yes, sir.

General CATCHINGS. Will you do that?

The WITNESS. Yes, sir.

General CATCHINGS. And transmit it to the stenographer.

The WITNESS. To whom must I send it?

Mr. ROBERTS. I suggest you send it to Mr. McCorkle, as examiner.

General CATCHINGS. I have a carbon copy of the letter.

Mr. ROBERTS. I think we would not object to the carbon.

General CATCHINGS. I have no objection to letting this go in, but it is only a carbon.

The WITNESS. Mr. Fitz-Hugh wrote me, something along that line. He wrote me—I could not get my ties at once—and gave excuses. What they are I do not know, but if they are in there—that is a carbon copy—it is all right.

Mr. ROBERTS. We will not object to it, because it is a carbon.

146 General CATCHINGS. Then, it is agreed that a carbon copy of a letter from P. P. Williams & Co. to Rumble Wensel Co., dated May 26th, 1917, shall be received in evidence in lieu of the original?

Mr. ROBERTS. Yes, sir.

(The carbon copy of the letter referred to was thereupon received in evidence and marked by the stenographer "Korndorffer Exhibit No. 4," as is as follows:)

"5-26-17.

RUMBLE WENSEL CO.,
Natchez, Miss.

GENTLEMEN: Replying to your letters of May 24th and 25th, we confess we see nothing in the correspondence you enclosed which is not regular or which could be construed as a hardship on you.

Our principals, Mess. Warren, Jones & Gratz, were able to get only a limited number of cotton ties from the Carnegie Steel Co., and they can not possibly ship them all out in June or July. The mills are making the ties as fast as they can. You know what demands the Government is making on all of the manufacturers, and you realize that the Government's orders must be taken care

147 of first. You can not possible need all of your ties in June and July. If they are shipped along to your customers as they need them during July, August, and September, their requirements will be filled just as well as if they were shipped at once, earlier in the season.

If you will consider the matter further, we believe you will agree with us that your position is not reasonable. We feel that every jobber in ties ought to realize the difficulties of the manufacturers, and do all they can to help them.

If you want 3,000 bundles ties for shipment, say 1,000 each, in August, September, and October, from the mill, we will see if we can not get them for you, but to expect them all in June and July seems to us as unreasonable, and unless you will change your position that you 'do not want any August ties,' we do not see how we can help you. We are taking our supplies for scattered shipment during July, August, and September.

Yours, very truly,

P. P. WILLIAMS & COMPANY."

By General CATCHINGS:

Q. I understand you to have stated you perfected your negotiations for ties in May, 1917?

148 A. Yes, sir; in May when the market opened, or June—it varies. I think it was May 18th or 19th.

Q. That is what I understood you to say?

A. Yes, sir.

Mr. ROBERTS. Have you concluded with the witness?

General CATCHINGS. That is all.

Redirect examination by Mr. ROBERTS:

Q. Mr. Korndorffer, did you ever fail to get ties from P. P. Williams & Co. when you also ordered bagging from them?

A. How is that?

Q. Did you ever fail to get ties from P. P. Williams & Co. when you also ordered bagging?

A. I never ordered any bagging from Mr. Williams.

Q. Was this 100,000 yards the only transaction you had with them?

A. Yes, sir.

Q. That is for the reason you preferred the Ludlow bagging, which they did not handle?

A. Yes, sir.

Q. They handled nothing but the American bagging?

149 A. I think they handled some foreign bagging, and also the American Union, which is made by the American Mfg. Co.

Q. You spoke about Mr. Fitz-Hugh offering to take the bagging back, the amount you had carried over, some 50,000 yards. When did he make that offer?

A. This season.

Q. What time?

A. I suppose some time in July.

Q. Since I came to see you in last May?

A. Yes, sir.

Q. I was there to see you last May?

A. Yes, sir; it was after you left there.

Q. After I left there?

A. Yes, sir.

Q. I was at your place on May 7th, was I not?

A. In the first part of May—I disremember the exact date.

Q. Then it was some time after that that he offered to take this bagging back that you had carried over?

A. Yes, sir.

Q. How were the prices on American bagging then, as compared to the time when you bought it in May, 1916—had the bagging prices advanced?

150 A. I should judge about 1½¢ up per yard.

Q. He did not say anything to you about giving you the of the advance?

A. No, sir.

Q. Just said he would take it back?

A. Yes, sir.

Q. You hardly saw, under the circumstances, that it would pay you, inasmuch as the price had advanced a cent and a half, to let him have it back; is that your idea?

A. Yes, sir.

Q. The general asked you a great deal about how the manufacturer of ties calculated the supply that will be needed and all that sort of thing. You are not posted about these things at all, are you?

A. No, sir; I told the general that.

Q. I understood you to say you were not in a position to know anything about the amount that is required, or how they arrived at the amount that will be needed?

A. Now, sir, no one can answer that question intelligently around this part of the country.

Q. Do you remember whether or not you had to pay more to get those ties in the spring of 1916 when you bought the American bagging—how the prices ranged?

151 A. No, sir; they have only one price when they open up. They were given at the opening price.

The EXAMINER. Does the price of bagging ever vary?

The WITNESS. Yes, sir; it always goes up a little after the opening.

By Mr. ROBERTS:

Q. Has the price advanced any this season; since the season opened?

A. Yes, sir; I think it advanced from one-half to three-quarters of a cent.

Q. Has the price of ties advanced any?

A. I think 9¢ a bundle.

Q. They opened at $2.20 in May, didn't they, f. o. b. Pittsburg?

A. No, sir; I think it was $2.08, with a 13¢ freight rate. I think it was $2.08 Pittsburg—$2.08 or $2.07, I am not quite sure. It was $2.08 or $2.07. Here it is [exhibiting]—$2.22 Natchez, less 4¢ a bundle, which makes it $2.19.

Q. $2.19 Natchez?

A. Yes, sir.

Q. That was the opening price in May?

152 A. Yes, sir.

Mr. ROBERTS. Would the Examiner like to ask Mr. Korndorffer any additional questions?

The EXAMINER. No, sir.

Recross-examination by General CATCHINGS:

Q. When Mr. Fitz-hugh offered to take over from you the bagging you carried over from 1916, did you understand that he did not intend to pay you what the bagging was then worth?

A. Well, I did not argue that with him. I did not know what he was going to pay me or anything else. General, now, to be fair about it, I did not know, really, how I would get along selling that American bagging, and, truthfully, I was selling it a little cheaper than I should, and I suppose that is the reason Mr. Fitz-hugh wanted to take

it off my hands. I would not blame him for wanting to do that. We were selling some of it cheaper than the York bagging.

Q. What I want to get at is, did Mr. Fitz-hugh propose not to pay you what that bagging was worth on the market at that time?

A. He did not make any such proposition to me at all.

153 He just offered to take it off my hands—I suppose at the market price.

Q. Didn't this take place in May, 1917, over the telephone, about the same time he sold the ties?

A. About the American bagging?

Q. Yes.

A. No, sir; it was later, I am not sure; but I do not think there was anything said about bagging when we bought the ties, except Mr. Fitz-hugh—I think he did say "Can't you use some American bagging?" and I said, "No"; and he said, "Well, I am selling it alongside anybody." I said, "Of course, in your territory, you can handle American bagging where they require it, as is the case with the Ludlow, with us."

By Mr. ROBERTS:

Q. When you speak of Mr. Fitz-hugh in your testimony you mean P. P. Williams & Co.?

The WITNESS. Yes, sir.

Mr. ROBERTS. Mr. Fitz-hugh is the manager and head man of P. P. Williams & Co.?

The WITNESS. He is the whole firm, as far as I know.

(The witness was thereupon excused.)

154 S. H. LOWENBURG was called as a witness, and testified as follows:

Direct examination by Mr. ROBERTS:

Q. Mr. Lowenburg, what is the full name of your firm, and where are you located?

A. I. Lowenburg Co., of Natchez, Mississippi.

Q. How long has your firm been engaged in the bagging and tie business?

A. As a part of our business, for about 50 years.

Q. State whether or not you have been pretty large dealers.

A. Up to three or four years ago we were very large dealers in bagging and ties, but up to the last two or three years, on account of general conditions and difficulties we have experienced in getting ties, on account of the supply in our section being limited to some extent, on account of the weevil, we have curtailed our business very materially in the handling of bagging and ties.

Q. What kind of bagging have you handled in the season of 1916 and this present year?

155 A. The principal bagging we have handled in the last two years has been largely the Calcutta bagging, particularly last year. In fact we have handled all of the different bagging, Ludlow, Calcutta, some American bagging, and some India bagging.

Q. What kind of ties do you handle?

A. The Standard Arrow tie?

Q. From whom did you buy those ties?

A. This season we bought our ties from P. P. Williams & Company.

Q. At Vicksburg?

A. Yes, sir; at Vicksburg.

Q. Did you ever undertake to buy them direct from Warren, Jones & Gratz?

A. I cannot recall that we have. I had always understood that O. Elmer & Co. in New Orleans were the agents. The firm down there now is Chas. O. Elmer, but last year it was O. Elmer & Co. and most of our transactions, with them were, I thought, representing Warren, Jones & Gratz. They were the parties we always figured with.

Q. Were you able to procure ties from any people last season, or this season, except Williams & Company and the Elmer firm?

156 A. They were the only parties that we could get any quotations from at all.

Q. Did you try other parties?

A. We tried the Atlanta Steel Co. They reported to us they were entirely out of the tie business. We tried Birmingham—a concern located there, I think Conner Wyman & Co.—and they were entirely out of the business. For a great many years prior to prossibly 1916 we were the agents for the Pittsburg Steel Co. We tried to get ties from them and they advised us that they were out of the tie business.

Q. They claimed they quit making ties last season?

A. They had no ties to offer, that was the basis.

Q. In 1916?

A. In 1916; yes, sir.

Q. You did not know any people at all from whom you were able to purchase ties except C. O. Elmers & Co. and P. P. Williams & Co. of Vicksburg.

A. That is all; that is, at the standard price, where we would not have to pay a margin over the price made on ties. The tie business—I do not know whether you want this in evidence or not—but up to last year they required you to buy 3,000 bundles of ties with 100,000 yards of bagging to get the benefit of a 4¢ allowance on ties.

157 I do not think that was applicable this year. But up to this year, it was my understanding they required that much purchase of ties with 100,000 yards of bagging in order to get a 4¢ rebate.

Q. On the bagging or the ties?

A. On the ties.

Q. 4 cents a bundle?

A. Yes, sir; four cents a bundle.

Q. Who required that—who made that kind of a proposition?

A. I think that was done—most of our business was done through O. Elmer & Co. I have not the evidence to produce in writing, but

think that was the general price made through Warren, Jones & ratz, who were practically the controllers of the tie situation.

Mr. Biggs. We desire to object to what the witness presumes or inks. If he has letters to that effect, they may be evidence, but hat he thinks or presumes is not permissible.

Mr. Roberts. We do not insist on that.

By Mr. Roberts:

Q. What firms in the Mississippi Valley country handled the row ties, made by the Carnegie Steel Co., in 1916 and 191– outside of P. P. Williams & Co. and C. O. Elmer & Co.—from
58 whom you were able, or the jobbers were able, to purchase—were there any others?

A. Well, we could have bought ties through C. Lee McMillan by aying them a profit on the ties.

Q. The price was higher than these other folks?

A. Yes, sir.

Q. Now—very much higher?

A. I suppose 5 or 10¢ a bundle.

Q. What year was that that you were able to buy from him?

A. Why, in the last two or three years. We have bought ties in ery moderate quantities, and we have been able, through the jobbers f ties, to buy ties by paying a profit.

Q. Was it not a fact that C. Lee McMillan & Co. have not been ble to get any ties lately?

A. I have not tried to buy any from them this season. I have been ble to get what I wanted from P. P. Williams & Co.

Q. You have had no trouble about ties during the season of 1917?

A. None at all.

Q. When does that season open—the season of 1917?

A. I think we bought our ties in May.

59 Q. Was that after I saw you or before, that you made these arrangements about the ties?

A. Afterwards, I think. I think you were with us very early in ay. In fact, I looked up the record, and I think it was about the th of May that you were there.

Q. About what time was it you made arrangements with P. Williams about the ties?

A. We bought them around about the time the prices opened. think it was about the latter part of May.

Q. Did you have any difficulty in getting your ties this year?

A. No, sir; none at all.

Q. Were you required to buy any bagging to get the ties?

A. No, sir.

Q. Did you buy them at the opening price?

A. Yes, sir.

Q. Look at that list [handing paper to witness] and see if that as the opening price?

A. No; this was a jobbing quotation out of Memphis on ties. We ught our ties on a basis, as nearly as I can recall, at $2.20 delivered

at Natchez. This is a jobbing quotation out of Memphis, o
160 the present prices for ties in the Memphis district. It state
plainly "Memphis." These prices also state here that "offer
ing new ties per bundle, provided you take a proportionate amou
of bagging, which must accompany ties." This is a brokerage co
cern out of Memphis.

Q. I wish you would take this letter and look at it, Mr. Lowenberg
A. Yes, sir; we received that letter.
Q. By due course of mail?
A. Yes, sir.
Q. About the time it bears date?
A. Yes, sir.
Q. With the writing as here [indicating]?
A. Yes, sir; just as the letter is here.
Q. Mr. ROBERTS: We offer that letter in evidence.

(The letter was thereupon received in evidence and marked by the stenographer "Lowenberg Exhibit 1," and is as follows:)

Phone Main 2229.

"CHARLES O. ELMER, SALES AGENT,
AMERICAN MFG. CO., 312-314 TCHOUPITOULAS STREET,
New Orleans, La., June 12, 1916.

161 I. LOWENBERG & Co.,
Natchez, Miss.

GENTLEMEN: All quotations subject to market fluctuations an
change without notice.

Please note that the firm of O. Elmer & Co., with whom I was co
nected for the past twenty years, has retired from the selling agen
of the American Manufacturing Company and Warren, Jones &
Gratz, and I now represent these mills for the sale of bagging an
ties, also rope and twine.

I trust that you will continue to favor me with your bagging an
tie business, which will be handled exactly as it was handled in th
past, except that I am now the sales agent. Of course, you w
undersand that I shall quote you mill price and render mill invoic

My mills have not named prices on bagging and ties yet, b
just as soon as they name their prices I shall quote you at once, an
shall hope to receive orders for contracts of both bagging and ti
at opening of the market to cover your season's requirements.

I am at your service, so do not fail to call on me whenev
you want information or quotations, and certainly when y
162 want to purchase bagging and ties. I shall anticipate th
favor of your patronage this year, and I assure you that yo
orders will be very valuable to me, and will be fully appreciated.

Yours, very truly,

(Signed) CHARLES O. ELMER,
Sales Agent.

(In handwriting.)

"I would suggest that you advise me ahead of time how much ba
and ties you want booked at opening prices. C. O. E."

Cross-examination by Mr. Biggs:

Q. Mr. Lowenberg, how many ties did you handle in 1916 in your business?

A. Why, I don't suppose we handled over, possibly, 1,500 bundles.

Q. From who did you buy those ties?

A. We bought them all around. We bought from O. Elmer & Company. We bought—at one time we got one of the jobbers at New Orleans to buy some ties for us, and our business in the tie and bagging business in 1916 was very light, for this reason, that preference in our section of the country is for the Ludlow bagging. Colonel Wallace of the Ludlow people told me positively that he could not get us any ties at all, and while we used to handle
163 a great deal of Ludlow bagging, and could always get a premium for it in our market, we had considerable trouble in handling the American bagging, so we did not push the business last year.

Q. You preferred to handle the Ludlow bagging?

A. Yes, sir; because the prices were identically the same. At the time the prices were issued, they came out on the same day, and while we pay the same price, we can always get a premium on the Ludlow bagging, and naturally we want to handle the goods that have the preference, and which they want.

Q. Did you try to buy any ties from Warren, Jones & Gratz? In 1916?

A. I tried to buy some ties from Elmer & Company.

Q. I am speaking of Warren, Jones & Gratz.

A. We have no record.

Q. Did you try to buy any in 1917?

A. No, sir.

Q. In 1915?

A. I can not recall.

Q. Or 1914?

A. I could not find any copies of letters or telegrams where we had taken up the matter with Warren, Jones & Gratz.

Q. You did not try to buy any in 1916 from Warren, Jones
164 & Gratz?

A. I do not think so.

Q. Did you try to buy any from P. P. Williams & Company in 1916?

A. I do not think so.

Q. You did not have any trouble in getting ties in 1916—you were not required to buy any bagging to get the ties?

A. We were from Elmer & Co.

Q. How many ties did you buy?

A. I do not know.

Q. How much bagging did you buy?

A. We bought a very nominal amount of bagging and ties in 1916, because—on account of the difficulty—we understood it was necessary to buy 3,000 bundles of ties and 100,000 yards of bagging,

and we discontinued handling the stuff, because of difficulty in getting rid of that American bagging, and to that extent our business in 1916 was moderate on that account. We were large handlers five years ago, but got out of the business because of the difficulties incident to it.

Q. Who told you you had to buy that quantity—100,000 yards of bagging and 3,000 bundles of ties?

A. I consulted a good deal with Mr. Korndorffer. A few
165 years ago we used to buy a good deal of it together, particularly when we had a barge of ties——

Q. Mr. Korndorffer told you?

A. Mr. Korndorffer showed me the facts of it—showed me a letter or a telegram.

Q. In the meantime you did not try to buy any from Warren, Jones & Gratz, or P. P. Williams & Company?

A. We tried with O. Elmer & Company. We were doing a lot of business then.

Q. Did you try to buy more ties than you got in 1916?

A. We tried to get ties, and he said that we would have to buy a certain amount of bagging.

Q. Did you try P. P. Williams & Company and Warren, Jones & Gratz?

A. I do not think so in 1916.

Q. You say Elmer & Company of New Orleans told you you had to buy 100,000 yards of bagging and 3,000 bundles of ties in order to get the discount?

A. In order to get the benefit of ¼ of a cent on bagging and four cents on the ties.

Q. Did Elmer write you that, or tell you?

A. Most of the talks were over the telephone.

166 Q. When did he tell you that?

A. About the time the prices opened.

Q. When was that?

A. About the spring of the year—May or June.

Q. Every year, including 1916?

A. Yes, sir.

Q. The other ties—you bought other ties than the ones from Elmer & Company?

A. We bought ties—probably a great many—from Williams & Company.

Q. In 1916?

A. Yes, sir; I would not be surprised.

Q. Did you buy bagging at that time?

A. I don't think so.

Q. You say you were required to buy 3,000 bundles of ties to get the discount price. Is it not true you bought 1,000 bundles of ties from P. P. Williams & Company?

A. I think it was last year that we had to buy 3,000 bundles; but this year it was not required to get the price.

Q. When was it you bought these 1,000 bundles of ties?

A. About the time the market opened—about the latter part of May or the first of June.

Q. Did you try this year to buy any ties from Warren,
167 Jones & Gratz?

A. No, sir.

Q. How long has it has been since you did any business with Warren, Jones & Gratz?

A. Why, really I don't know. The last business I did with them I bought 100,000 yards of American bagging.

Q. When was that?

A. I think probably four or five years ago.

Q. You think probably four or five years ago?

A. Yes, sir.

Q. Did you buy any ties from them?

A. I can not recall whether I did at that time or not.

Q. Did P. P. Williams & Company tell you at any time you had to buy bagging in order to get ties?

A. I could not make a positive statement on that.

Q. You have not—can you give us the time when you did business last with Warren, Jones & Gratz—bought any ties from them at all?

A. I really do not know; but I imagine we bought about 3,000 bundles of ties from them at the time we bought the 100,000 yards of American bagging, but I am not positive of that.

Q. Was there not a time, some four or five years ago,
168 when you bought some ties from them without buying bagging?

A. I think not, because four or five years ago we represented the Pittsburg Steel Company and bought most of our ties from them.

Q. Mr. Lowenberg, you were a director, I believe, in the First Natchez Bank at the time it failed?

A. Yes, sir.

Q. How long had you been a director?

A. I suppose ten years.

Q. When did it fail?

A. In 1913.

Q. Were you active in the business of that bank?

A. No, sir.

Q. You were a director of the bank, I believe?

A. Yes, sir.

Q. You were familiar with its affairs, I presume?

A. I am sorry I was not very familiar with it.

Q. In 1913 did you do any business with Warren, Jones & Gratz?

A. I could not tell you what year it was; it was four or five years ago we bought this bagging. I say I don't know whether it was 1913, 1914 or 1912.

169 Is it not true that it was in 1913 that you bought some ties from Warren, Jones & Gratz, and that they were shipped to you, the bill of lading with draft attached, and that you gave a check on the First Natchez Bank to pay for those ties, and that you took up the bill of lading and got possession of ties, and that the bank remitted on the draft to the Citizens Bank of New Orleans, and in the meantime the First Natchez Bank failed, and Warren, Jones & Gratz failed to get their money?

A. That is the first time I have heard of it, if it is a fact.

Q. Don't you know, by reason of that fact, they failed to get their money for those ties they shipped you in 1913, with the bill of lading attached, and that is how they failed to get their money?

A. I do not recall anything of that at all.

Q. You kept your account in the First Natchez Bank, didn't you?

A. We did business with the First Natchez Bank, the Whitney Central Bank, and a New York bank.

Q. You don't remember anything about that transaction?

A. I do not recall that transaction at all.

Q. You don't remember that they lost about $1,800.00 on
170 account of the transaction?

A. I do not remember anything about it.

Q. You have not tried to do any business with them since then?

A. I have bought through Elmer & Company in New Orleans.

Q. I am speaking about Warren, Jones & Gratz.

A. I do not think so; no, sir; but not for any reason of that kind, because we were practically out of the business.

Q. Except in 1916 or 1917, do you not remember how many ties or how much bagging you handled prior to those two years?

A. No, sir; since the advent of the boll weevil, about six or seven years ago.

Q. You have been sort of out of the bagging and tie business.

A. Out of the bagging and ties business except in a very moderate way.

Q. You can not give us the date, except to say it was some time in the early part of 1916, that you had this alleged conversation with Elmer & Company over the telephone. With whom were you talking on the telephone at that time?

A. We usually had the correspondence. I talked with O. Elmer himself.

171 Q. Do you remember this occasion of which you tell us, about the conversation in which he said you had to buy bagging in order to get ties?

A. I remember the occasion, but the date I do not recall.

Q. With whom were you talking over the phone?

A. I judge Mr. Elmer. Most of the conversations were with him. I would ring up the firm of O. Elmer and Company, and very often, in our purchases, Mr. Elmer himself was there. Whether it was Mr. Elmer or his son or some one else, I do not know.

Q. Or a clerk in the store; you could not swear?

A. No, sir.

Q. You can not give us the date of that except that it was last year some time?

A. Yes, sir; and his letters will indicate that he wants to sell us bagging and ties.

Q. We have that letter, but in that letter he did not say he would only sell ties in the event you bought bagging?

A. He said in the letter——

Q. You say this occurred in a telephone conversation?

A. Yes, sir.

Q. You have no other evidence?

172 A. No, sir.

Q. Except this alleged conversation which you say was with somebody in that office.

A. Yes, sir.

Q. You called up the office?

A. Yes, sir.

Q. What was the cotton crop in 1916?

A. I think it was around 12,000,000 bales.

Q. And in the year before—1915?

A. Why, I really don't know. I think it was either 14,000,000 or 15,000,000. The crop was up around 15 or 16,000,000 bales of cotton.

Q. In 1915?

A. I do not know the cotton crop of 1915.

Q. Or 1914?

A. Well, I believe that the crops of 1915 and 1916 were very close together, but I believe the 1914 crop was a very much larger crop, but I—the statistics will show that very conclusively.

Q. How many bundles of ties did you handle last year—1,500 you say?

A. I judge, probably 1,500; maybe more, and maybe a few

173 less.

Q. How many yards of bagging?

A. We handled a great deal of imported bagging last year.

Q. Calcutta bagging?

A. Yes, sir.

Q. Did you handle any American bagging last year?

A. We handled some American bagging.

Q. From whom did you get that?

A. From Elmer & Company, and we may have bought some from Mr. Williams in Vicksburg.

Q. Do you know how many yards of bagging you bought last year?

A. And bought some from Rumble & Wensel.

Q. You bought some from Rumble & Wensel. How much did you buy—do you know how many yards of bagging you bought last year?

A. I judge about 70 or 7,500 yards altogether.

Q. Take 1915, how much bagging did you sell that year?

A. Why, it would be a very hard matter to give you any idea of that, because we handled so many different kinds of bagging, and we bought a good deal of bagging. We bought a good deal of

174 bagging from Rumble & Wensel, who buy the Ludlow bagging in large quantities, getting the benefit of four cents allowance, because of the quantity, and they divide up the jobbers, in the jobbing of this bagging. In addition to that, we handled a great deal of Calcutta bagging. We have lots of customers who do not want anything else if they can get it.

Q. You say you bought ties from C. Lee McMillan in New Orleans last year?

A. We could have bought from a good many jobbers last year by paying a profit.

Q. Did you try last year to buy ties from anybody else except Williams & Company and Elmer & Company?

A. I don't remember whether it was last year or the year before last.

Q. We are talking about last year.

A. I could not tell you.

Q. Or whether you made any effort to buy any ties outside of those—you did not try to buy any from Warren, Jones & Gratz! You stated that.

A. Yes, sir; and the only reason we did not try was that we understood the requirement was 100,000 yards of bagging with 3,000 bundles of ties.

175 Q. They never told you they required you to buy 3,000 bundles?

A. I have no record of it.

Q. You do not say they told you that?

A. I don't say they told me that.

Q. That is the general impression you have, that that is the fact, and that is all you have to say about that?

A. Yes, sir.

Q. You say you were an agent for the Pittsburg Steel Company several years ago?

A. Yes, sir.

Q. When was that?

A. Six or seven years ago—probably eight years ago.

Q. At that time you bought your ties from them?

A. During that period I bought my ties from them.

Q. In large quantities?

A. We were very large handlers a few years ago.

Q. Did you try to buy any last year from the concern?

A. I do not know about last year, but the year before we tried to buy from the Pittsburg Steel Company and the Atlanta Steel Company—and probably last year, and they said that they were not manufacturing ties.

176 Q. I asked if you had tried last year, and you said no, not the year before, but 1916?

A. I said, I did not think I had. We were not very large handlers.

Q. You did not try to buy any from the Pittsburg Steel Company last year, I understood you to say. Did you make any complaint to the Federal Trade Commission about this matter?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. When?

A. Along about January or February.

Q. Of the past year?

A. Of this year.

Q. What was your complaint—what was the trouble?

A. When I was in Boston in January I went around to see the Ludlow Manufacturing Company. Mr. Wallace, the president of the Ludlow Manufacturing Company, said to me, "Lowenberg, how is it you do not handle any more bagging from us? You used to be a pretty big customer of ours." I said, "Well, Mr. Wallace"——

Mr. BIGGS. I object.

177 Mr. THOM. You asked the question which brought it out.

Mr. BIGGS. I do not want to bring in any incompetent testimony.

General CATCHINGS. The question was, what complaint did you make?

Mr. ROBERTS. The letter shows that.

General CATCHINGS. That was the question, what complaint did you make?

The EXAMINER. He said he had a conversation with this man, and it was the result of that conversation. You need not state what occurred between you. I do not think you should repeat what Mr. So-and-So said.

General CATCHINGS. Just state what the complaint was.

Mr. THOM. I was not insisting upon that point of view.

The WITNESS. The complaint was based largely on this conversation. It came up in that way, and that was the basis of the complaint.

Mr. BIGGS. Which complaint was that?

Mr. WITNESS. I was trying to explain when you objected to my replying to you.

Mr. BIGGS. Go ahead and give the conversation.

The WITNESS. I stated in Boston and I had talked with

178 Mr. Wallace, the president of the Ludlow Manufacturing Company, and he wanted to know why we had not handed considerable of his bagging; that we used to be big customers, and I told Mr. Wallace, in the first place that we had had boll weevil conditions in our country that had reduced the quantity of bagging that we had formerly used, and, in the second place, that the requirements were that we had to buy 100,000 yards of bagging and

3,000 bundles of ties; that we could not go to work handling Ludlow bagging, because we could not get rid of that bagging, and as long as they were unable to furnish us with the ties that we had, of course, to abandon our business very largely in the handling of bagging and ties. Mr. Wallace said he could not furnish us with any ties, and in my conversation with him I told him that I thought it was a shame that we were practically put out of handling that bagging because of the difficulty in getting ties, and from the general talk which we had, I concluded that the best thing to do was to take up the matter with the Federal Trade Commission, to find out if the one concern in the country, which was manufacturing ties—if there was any limitation in the manufacture of ties; that we formerly got prices from the Pittsburg Steel Company and the Atlanta
179 Steel Company, but were unable to get prices now, and to ask that the matter be investigated.

By Mr. Biggs:

Q. Did Mr. Wallace suggest that to you?

A. Mr. Wallace thought that was a good way to get at it.

Q. Mr. Wallace, of the Ludlow Manufacturing Company, suggested that you take the matter up with the Federal Trade Commission, and that is how you happened to do it?

A. Yes, sir; that is how I happened to do it.

Q. You have not had any special trouble, have you, getting the ties, Mr. Lowenberg, from P. P. Williams & Company and other people?

A. We had trouble in getting ties from people who formerly quoted us, the Pittsburg Steel Company, the Atlanta Steel Company, and this Birmingham concern.

Q. Did you complain against them?

A. We complained against the general condition and asked for an investigation; that we understood that Warren, Jones & Gratz handled, absolutely, the general tie situation in this country.

Q. That is just your general understanding?

A. That is my general understanding.

Q. Were you ever unable to buy ties from P. P. Williams
180 & Company when you tried to buy them?

A. This year I have had no trouble at all, and up to this year the only time we had bought ties from Mr. Williams, when we ran out of ties and wanted a quick shipment, when we had to buy them and pay a profit for them in 25 and 50 bundle lots.

Q. Why did you discontinue your agency for the Pittsburg Steel Company?

A. They stopped manufacturing them, so they claimed.

Q. Have you any letter or anything of that kind stating that they had discontinued the manufacture of ties?

A. I do not know whether I could find a letter or not. Our files have been changed around so completely, that I find, in checking up, a lot of our files were destroyed.

Q. Is it not a fact that the Pittsburg Steel Company have made ties this very year?

A. I could not say so.

Q. You were the agent and should know whether——

A. Yes, sir.

Q. If they discontinued your agency, they probably told you of it?

A. Yes, sir——

181 Q. It is reasonable to suppose that they would do that?

A. Yes, sir; I think that is reasonable.

Q. They told you they had discontinued your agency?

A. Possibly they did. We certainly got the information direct from them that they had discontinued the manufacture of ties.

Q. You will not say that they have not made ties every year since?

A. I would not say that, because I do not know.

Q. Your only and sole effort last year to get ties was from Elmer & Company, and P. P. Williams & Company. You got your ties and made no effort to get them anywhere else, but were still dissatisfied, and wanted to complain to the Federal Trade Commission on the supposition that possessed your mind that somebody controlled the tie situation?

A. That is about it.

Q. Your business——

A. Our business has been curtailed on account of the requirement that we must buy 3,000 bundles of ties——

Q. Don't you know that Ludlow manufactured and sold ties in great quantities last year.

A. I do not know that.

182 Q. Did you try to buy any from them?

A. I certainly talked with them on the tie proposition and Mr. Wallace said that he was not in a position to quote prices on ties.

Q. Why were you compelled to curtail your business? You say other concerns did not suffer in that way. Your neighbors, Rumble & Wensel have been doing business, and P. P. Williams & Company have been doing business. What was your trouble?

A. The fact we had to buy, to start with, 3,000 bundles of ties to be in a competitive condition——

Q. That is what I want to get at. When and where did you have to do that?

A. Last year.

Q. Who told you you had to do that?

A. Elmer & Company; that we had to buy 100,000 yards of bagging and 3,000 bundles of ties to get the benefit of the jobber's discount.

Q. You did not have that trouble this year?

A. We did not have that trouble this year; the only party we——

183 Q. That was a discount to parties who bought in large quantities?

A. The only party we tried to buy ties from this year was 3,000 bundles of ties from P. P. Williams & Company.

Q. You had a failure, did you not, Mr. Lowenberg?
A. I never heard of it, if it is a fact.
Q. Were you not sued when the First Natchez Bank failed?
A. As a director.
Q. Did that bank pay out in full?
A. It did not.
Q. What did it pay out?
A. They have never wound up its affairs.
Q. Did they ever pay dividends to the creditors?
A. I do not know.
Q. Did they sue you in that connection?
A. The receiver sued all directors.
Q. Did they collect?
A. I settled with them for $30,000.00.
Q. What was the amount sued for?
A. I think they sued us all for about $1,000,000.00.
Q. And you settled for $30,000.00.
A. Yes, sir; and the other directors all settled.

Q. You do not know that Warren, Jones & Gratz lost
184 their money because of that shipment of ties to you?

A. That is the first I have heard of it, if that is the fact. I was not active in the bank in any manner, shape or form. I had been in the wholesale grocery business all of my life, and happened to be a director, just as dozens of directors are called in to act as directors of any number of banks.

Q. At that time did not Warren, Jones & Gratz write you letters about this matter?

A. If they did I can not recall it, and I doubt it very much. I looked through my files to see if I could find any correspondence with Warren, Jones & Gratz, and could not locate it.

Q. Did you not have a man by the name of Samuels in your business at that time?
A. Yes, sir.
Q. Where is he?
A. In New Orleans.
Q. Don't you know there has been correspondence that took place between your office and Warren, Jones & Gratz in reference to this loss, growing out of that shipment of ties?
A. No, sir; Mr. Samuels was one of the receivers for the bank, and probably they did have some correspondence with him
185 at the bank.

Q. Mr. Samuels was in your business, and was one of the receivers appointed by the court?
A. Yes, sir; he and Mr. Brandon.
Q. He was interested in your business?
A. Yes, sir; and still is.
Q. He is a partner of yours?
A. It is a corporation.
Q. Was it a corporation then?

A. In 1913 we were a corporation; yes, sir, and after he took over the receivership, he spent all his time there, and what took place there I don't know.

Mr. BIGGS. That is all.

Redirect examination by Mr. ROBERTS:

Q. Did you receive this letter from C. O. Elmer & Company at the time it is dated?

A. Yes, sir.

Mr. ROBERTS. We offer this in evidence.

(The letter referred to was thereupon received in evidence and marked by the stenographer, "Lowenberg Exhibit No. 2," and is as follows:)

186 "NEW ORLEANS, LA., *April 29, 19* .

MESSRS. I. LOWENBERG & CO.,
Natchez, Mississippi:

GENTLEMEN: Replying to your P–C 15th and letter 26th beg to advise that our mill people have not yet named prices on bagging and ties so that there is no market on same just now by manufacturers. As soon as we have prices to offer, we shall quote you.

Yours, truly,

O. ELMER & CO.,
Sales Agent.

(Signed) C. O. ELMER."

R. C. WILKERSON was called as a witness and testified as follows:

Direct examination by Mr. ROBERTS:

Q. Your name is R. C. Wilkerson, is it not?

A. Yes, sir.

Q. You live in Vicksburg?

A. Yes, sir.

Q. Were you formerly in the bagging and tie business?

187 A. I used to sell bagging and ties; yes, sir.

Q. When did you quit it?

A. I sold some bagging as late as 1914. I have not sold any ties for about eight or ten years.

Q. What caused you to go out of the bagging and tie business, Mr. Wilkerson?

A. The people I represented discontinued manufacturing them.

Q. Discontinued manufacturing them?

A. Yes, sir.

Q. Whom did you represent.

A. I represented Lindsey & McCutcheon at Allegheny at one time. They sold out, and then I represented the Monason Steel & Hoop Company, of Monason, and then the Sharon Company at Sharon, Pa.

Q. What became of those people?

A. Lindsey & McCutcheon Company, I think, sold out.

Q. They have all discontinued the manufacture of ties?

A. As far as I know.

Q. Have you been able to procure ties from any of these manufacturers that you formerly represented in that territory around Vicksburg?

188 No, sir.

Q. Were you able to buy ties from anyone in order to continue in the tie business?

A. I was not. I tried to; that is, from a manufacturer that I could represent as a broker.

Q. You mean to make anything on?

A. I was unable to get a connection with a manufacturer of ties on a brokerage basis.

Q. Were you able to compete with P. P. Williams & Company in the Vicksburg market and in that territory on any price that you could get from the manufacturer?

A. I sell to P. P. Williams & Company. They are one of my largest customers.

Q. You sell them what?

A. Everything that I sell in a brokerage way. I have sold them ties in days gone by when I had a connection with a manufacturer and was selling ties.

Q. But after P. P. Williams got the business of handling ties for Warren, Jones & Gratz and bagging for the American Bagging Company were you able to compete with them in that territory in the bagging and tie business?

189 A. Well, I sold some bagging to them in 1914. The last bagging I sold was sold to P. P. Williams & Company—245,000 yards in June or July of 1914, but I did not have a connection with any manufacturer of cotton ties that I could offer to anyone. I was not in the jobbing business. Being in the brokerage business, I had to get a connection with a manufacturer in hopes of getting prices sufficiently in line to sell to jobbers, such as Rumble & Wensel, I. Lowenberg and Company, P. P. Williams & Company, and such firms as that. That is the nature of my business.

Q. From whom could you get ties—who handles ties except P. P. Williams at Vicksburg and C. O. Elmer at New Orleans—do you know anyone else who handles ties?

A. I do not know anything about Elmer, but Williams & Company are the only large handlers of ties at Vicksburg that I know of.

A. Don't they have the entire trade on ties and bagging in that territory?

A. As far as I know; yes, sir.

Q. And have for several years, have they not?

A. Yes, sir.

Q. Do you know of anyone who manufactures ties at the present time except the Carnegie Steel Company at Pittsburgh?

190 A. I do not know of anybody—except by hearsay I do not know they manufacture them. I have never been in the plant to see it.

Q. Is there anyone who handles ties at Vicksburg except P. P. Williams & Company?

A. In large quantities; no, sir.

Q. Can anyone else get ties from Warren, Jones & Gratz except P. P. Williams & Company?

Mr. BIGGS. I object to the witness stating as to what other people can do.

The WITNESS. I do not know.

By Mr. ROBERTS:

Q. Did you ever try to get them from them while you were in business?

A. No; I never have.

Q. Why is it you could not buy ties from the mills at Birmingham and at Atlanta, in order to compete with P. P. Williams & Company, if you wanted to stay in the tie business?

A. I never asked them for their account; but I did at one time, a great many years ago, have an Atlanta account. That was a great many years ago. I did not know there was a manufacturer at Birmingham.

191 Q. Is it a fact that P. P. Williams & Company do a large business?

A. Yes, sir.

Q. In Mississippi, Texas, Arkansas and Alabama and Louisiana?

A. Yes, sir; for that entire territory, as far as I know.

Q. Did you make the statement that "it is impossible to compete with them in bagging and ties"——

A. Yes, sir; I think they have got——

Q. Did you make the statement to me when I came to see you—I will read it off—"P. P. Williams & Company represent Warren, Jones & Gratz at this place, and do an enormous business in Mississippi, Louisiana, Texas, Arkansas, and Alabama. It is impossible to compete with them in bagging and ties?"

A. Yes, sir; I made that statement.

Q. Why is it impossible?

A. Because the other people do not have the same facilities as P. P. Williams & Company. They have not the same connections with people that manufacture the stuff, as their agents. I can not sell something I have not got, you know.

Q. You had to discontinue business because P. P. Williams & Company could sell them lower than you could possibly afford

192 to do it—was not that the reason?

A. No, sir; I had to discontinue business because I did not have any connection that would give me the prices.

Q. That is just another way of stating the same thing. You could not get the goods at a price where you could compete with P. P. Williams & Company—is not that so?

A. I am not a competitor of P. P. Williams & Company. I am a broker and P. P. Williams & Company are jobbers. I could not

get a manufacturer who was manufacturing ties to make me their agent.

Q. To let you have the goods at a price which would enable you to sell them to the trade as low as P. P. Williams & Company?

A. Yes, sir.

Q. Is not that true?

A. Yes, sir.

Q. And that is the reason you quit?

A. I quit because I could not get an agency.

Mr. ROBERTS. That is all.

General CATCHINGS. We have no questions.

(The witness was thereupon excused.)

(Whereupon a recess was taken until 2.30 o'clock p. m.)

193 AFTER RECESS.

The hearing was resumed at 2.45 o'clock p. m. pursuant to the taking of a recess.

Mr. ROBERTS. If the examiner please, Mr. Green, we are informed, is in Meridian, and we are not informed as to when he will return.

The EXAMINER. Mr. Green, the witness?

Mr. ROBERTS. Yes, sir; he was subpœnaed to be here to-day. I do not know why he went to Meridian when he was subpœnaed to be here. Mr. Thom, my associate counsel, and I have had a conference with Mr. Britton, the other witness who was subpœnaed in the case, and we have decided that we will not put Mr. Britton on the stand; so, under the circumstances, we are unable at this time to offer any more testimony. If Mr. Green returns from Meridian in time to see him before we get away from here, we may be able to call him later.

(The respondents offered no witnesses at this hearing.)

(Whereupon, at 3.00 o'clock an adjournment was taken to room 300, Federal Post Office Building, New Orleans, Louisiana, Monday, October, 22nd, 1917, at 10.00 o'clock a. m.)

194 Before the Federal Trade Commission.

THE FEDERAL TRADE COMMISSION
vs.
WARREN, JONES & GRATZ.
} Docket No. 12

SECOND DAY.

ROOM 300, U. S. POST OFFICE,
New Orleans, Louisiana, October 22, 1917—10.30 o'clock a. m.

The hearing was resumed, pursuant to the taking of adjournment at Jackson, Mississippi.

Present: Special Attorney George McCorkle, sitting as examiner.

Appearances (as heretofore noted).

The hearing was called to order by the examiner.

195 CHARLES M. PLATTER was called as a witness and, being first duly sworn by the examiner, testified as follows:

Direct examination by Mr. ROBERTS:

Q. Mr. Platter, where do you live?

A. Dallas.

Q. Dallas, Texas?

A. Yes, sir.

Q. With what firm are you connected?

A. Boren & Stewart Company, Incorporated.

Q. Of Dallas, Texas?

A. Yes, sir.

Q. How long has that firm been in business, Mr. Platter?

A. Since 1886.

Q. State whether or not they have been engaged in selling bagging and ties during that time, from 1886 until now?

A. From my absolute knowledge—my absolute knowledge only dates back to the first of June, 1915, when I became connected with the corporation.

196 Q. You have been associated with the firm since June, 1915?

A. Yes, sir.

Q. In what capacity?

A. General manager.

Q. As general manager?

A. Yes, sir.

Q. Are you familiar with the business of that firm since that time?

A. Yes, sir; I think fairly so.

Q. Mr. Platter, did you ever buy any bagging and ties from Warren, Jones & Gratz, or their agents?

A. Yes, sir.

Q. How did you buy them—from them direct or from some one else?

A. We bought them direct from Warren, Jones & Gratz.

Q. Have you been buying from them since June, 1915, when you became associated with this firm?

A. Yes, sir.

Q. What correspondence, if any, have you going to show their methods of doing business—the methods adopted by them in selling bagging and ties? I wish you would——

197 A. The subpœna, I think, called for all of the correspondence.

Q. I wish you would give me just the parts that relate to the parts to which your attention was directed by the subpœna.

A. I have all the correspondence which could be found pertaining to the purchase of bagging and cotton ties with Warren,

Jones & Gratz. We have some other relations with them, the roy
business, which I did not bring.

Q. I wish you would get out of the pile there the correspondenc
or letters which you have received from Warren, Jones & Grat
in regard to the point that they required purchasers to buy bagging
in order to get ties, if you have any correspondence of that nature

A. Well, I have quite a good deal here; not knowing just wha
you wanted, I brought it all.

Q. If you have any letter showing that, let us have that.

A. Do you mean this year or last year?

Q. Yes, sir. Mr. Platter, I wish you would look, please, at thes
two telegrams I hand you [handing telegrams to witness].

198 A. Yes, sir.

Q. State whether or not those telegrams were regularl
delivered to you by the telegraph company at your place in Dallas

A. They were.

Q. At the time they bear date?

A. Yes, sir.

Q. Both of them?

A. This [exhibiting] is a confirmation.

Q. One of them is not a confirmation.

A. The original delivery of telegram—this is a confirmation
[exhibiting] that came by the mails.

Q. Did you receive the confirmation by mail in due course of
mail?

A. Yes, sir.

Mr. ROBERTS. We tender this telegram, dated St. Louis, June
26, 1916——

The EXAMINER. From whom?

Mr. ROBERTS. From Warren, Jones & Gratz, to Boren & Stewart
Company, Dallas, Texas, and a letter confirming the telegram, bear-
ing the same date, from and directed to the same parties.

199 (The telegram and confirmation referred to were there-
upon received in evidence and marked by the stenographer
"Platter Exhibits 1 and 2," respectively, and are as follows:)

Postal Telegraph-Cable Co.
67ks od 52 1132am.

A St. LOUIS, MO., *June 26, 1916.*

BOREN AND STEWART CO., *Dallas.*

Telegram received; will book your order for one hundred thou-
sand yards bagging with thirty-three hundred bundles ties to match,
but can not sell you six thousand bundles in addition as our supply
of ties is limited; we are not selling ties to any one except with
proportional amount bagging. Answer if satisfactory.

WARREN, JONES & GRATZ.

COPY BOUND

Warren, Jones & Gratz, confirmation of telegram, sent by Postal Telegraph Co., St. Louis, June 26, 1916.

200 BOKEN & STEWART CO.,
Dallas, Texas.

Telegram received. Will book your order for one hundred thousand yards bagging with thirty-three hundred bundles ties to match, but can not sell you six thousand bundles in addition as our supply of ties is limited. We are not selling ties to any one except with proportionate amount bagging. Answer if satisfactory.

WARREN, JONES & GRATZ.

By Mr. ROBERTS:

Q. Mr. Platter, during the season of 1916, state whether or not your firm had much difficulty in securing a supply of ties or bagging, either.

A. Well, that is rather difficult to answer. This telegram [referring to Exhibit No. 1] indicated our need at that time for ties in addition to what was necessary to match the bagging that we were buying, and I probably have records here that show——

Mr. BIGGS. I object.

Mr. ROBERTS. That would be improper, to state what the records show.

201 The EXAMINER. Do not mention the records until they are introduced.

By Mr. ROBERTS

Q. Was there any other manufacturer from whom you could buy ties in 1916, except the Carnegie Steel Company or Warren, Jones & Gratz?

A. My recollection is that I was not able to buy from any manufacturers, but I bought to cover bagging that we had carried over from our dealers.

Q. From dealers—was that second-hand stuff you bought from dealers—second-hand ties or second-hand bagging, or not?

A. I think the expression "dealers" necessarily means second hand.

Q. I did not know whether it meant it or not?

A. Yes, sir.

Q. Dealers only had second-hand stuff.

A. I do not know what the dealers' connections would be.

Q. I thought you said that would imply it was second hand because you would get them from the dealers?

202 A. It would, to my mind, but I could not state positively.

Q. Who seemed to handle the entire output of new ties in the territory in which you did business—how did you have to secure your ties, and bagging, and from whom?

A. Your question is too much involved for me to answer. The first part of it I do not know, outside of Warren, Jones & Gratz, as I do not know from whom the other dealers——

UND CLOSE IN CENTER

Q. Do you know of anyone from whom you could buy new Arrow ties in that territory, except from Warren, Jones & Gratz?

A. In 1916?

Q. Yes.

A. Yes.

Q. Who?

A. We bought from M. M. Graves Company, of Houston, dealers.

Q. Well, I said new Arrow ties.

A. Our specifications said "new Arrow ties."

Q. You do not know from whom Graves bought them?

A. No sir.

203 Q. Who were the general selling agents for the Carnegie Steel Company for ties in that territory?

A. Well, I do not really know, in 1916, who were the selling agents. The correspondence I showed you there relates to 1917, with the Carnegie Steel Company. I do not know of my own knowledge.

Q. You do not know for 1916?

A. No sir.

Q. Who were the genaral selling agents of the Carnegie Steel Company in 1917, for Arrow ties?

A. Let me see that correspondence.

Q. Those telegrams?

A. No sir; some papers and correspondence there. The Carnegie Steel Company wrote us on April 5, in response to our inquiry, that they would be able to supply our needs through Warren, Jones & Gratz, of St. Louis, "as usual," they expressed it. They do not say there they are their general agents, but that is what they say here in the letter.

Q. Mr. Platter, when you bought those ties from M. M. Graves, how did the prices correspond with the prices you had to pay Warren, Jones & Gratz?

204 A. You will have to give me time to refer to the correspondence to find that.

Q. Do you know whether you had to pay them a profit over what you paid other people, or not, without referring to the correspondence?

A. Yes sir; we paid an advance over the price set by Warren, Jones & Gratz.

Q. Well, that is sufficient. Are these letters here correspondence between the Carnegie Steel Company and your firm [handing papers to witness]?

A. Yes, sir.

Q. All those letters passed through the mails in regular course?

A. Yes, sir.

Mr. ROBERTS. I tender these letters in evidence without particularly identifying them. I will get the stenographer to identify them. Have you any objection, Mr. Biggs?

Mr. BIGGS. No sir.

(The letters and papers referred to were thereupon received in evidence and marked by the stenographer "Platter, Exhibits Nos. 3 to 7," inclusive, respectively, and are as follows:)

[Platter Exhibit No. 3.]

CARNEGIE STEEL COMPANY,
GENERAL OFFICES, CARNEGIE BUILDING,
Pittsburgh, Pa., May 24, 1917.

BOREN-STEWART COMPANY,
Mr. Chas. H. Platter, Vice President,
Dallas, Texas.

GENTLEMEN: We have received your letter of May 21st. We understand that Warren, Jones & Gratz have sold you a lot of cotton ties, and these are all that we have to offer at present. Under the present steel conditions we do not know what we will have later in the fall, but there is nothing further we can do for you at this time.

Yours, truly,

W. C. CLYDE,
Asst. General Manager of Sales,
J. H. A.

J.H.A./W.

[Platter Exhibit No. 4.]

MAY 21ST, 1917.

CARNEGIE STEEL COMPANY,
Pittsburgh, Pa.

GENTLEMEN: We hope by this time you can offer us direct, or through Warren, Jones & Gratz, some cotton ties. We have had this matter up recently with Warren, Jones & Gratz, but were advised that they were only in position at that time to offer us ties with bagging. We have made a purchase from them on this basis, but we need some extra ties.

Yours, truly,

BOREN, STEWART COMPANY,
Vice President.

R.

[Platter Exhibit No. 5.]

CARNEGIE STEEL COMPANY,
Pittsburgh, Pa.

GENTLEMEN: We thank you for your letter of the 5th instant, and are pleased to note you feel sure you will be able to supply our requirements in ties through Warren, Jones & Gratz, as usual.

We may require, during this coming season, ties in excess of what we could cover with bagging from them, as sugar bag cloth is selling in larger volume.

Yours, very truly,

BOREN STEWART COMPANY,
Vice President & Gen. Mgr.

P-B.

[Platter Exhibit No. 6.]

CARNEGIE STEEL COMPANY,
Pittsburgh, Pa., April 5th, 1917.

BOREN-STEWART COMPANY,
Mr. Chas. H. Platter, Vice President & Gen. Mgr.,
Dallas, Texas.

DEAR SIR: We have received your letter of March 28th and it has been given careful attention.

We do not think there is any question but that there will be enough cotton ties to take care of the crop that may be grown this year and that we will be able to supply your needs through Warren,
208 Jones & Gratz, of St. Louis, as usual. Of course, you understand the conditions which are confronting us to-day, and it is difficult to tell just what the situation will be at the time we are ready to offer cotton ties for the coming season.

We thank you for writing us.

Yours, truly,

CARNEGIE STEEL COMPANY.
(Signed) W. G. CLYDE,
Asst. Gen. Mgr. of Sales.

JHS/f.

[Platter Exhibit No. 7.]

MARCH 28TH, 1917.

CARNEGIE STEEL COMPANY,
Pittsburgh, Pa.

GENTLEMEN: We beg leave to ask as to whether we can depend upon you supplying us with at least a portion if not all of our requirements in Arrow ties during the coming season. We were last year placed at a considerable disadvantage from the fact that your selling agents, Warren, Jones & Gratz, were not in position, in fact, absolutely refused to sell us ties without a corresponding quantity
209 of bagging being purchased at the same time. We were not in position to purchase bagging, from the fact that we had carried over a considerable yardage of American bagging, but could not even get the ties to cover this yardage. Our only recourse was to pick up in odd lots, from brokers and speculators, ties at some advance over your prices, and we are writing you direct concerning

this matter, for the reason that we would like to know what is to be your policy during the coming season.

Thanking you in advance for an early reply, we are

Yours, very truly,

BOREN STEWART COMPANY,
Vice President.

B.

MR. ROBERTS: You can question Mr. Platter.

Cross-examination by Mr. BIGGS:

Q. Mr. Platter, as I understand you to say, you have been connected with the present concern in the bagging and tie business since 1915?

210 A. Yes, sir.

Q. What time in 1915?

A. I went in there about May of 1915.

Q. May of 1915?

A. Yes, sir; sometime during May, 1915.

Q. Is that the first time you have been in the bagging and tie business?

A. No, sir.

Q. What times previously?

A. I had been in the bagging and tie business prior to 1903.

Q. Prior to 1903.

A. Yes, sir.

Q. From 1903 to 1915 you were not in the bagging and tie business?

A. No, sir.

Q. At the time you were in the business before, did you do business with Warren, Jones & Gratz?

A. Yes, sir.

Q. Now, in 1916, I will get you to state, Mr. Platter, how many ties you handled?

A. I could not answer, as I have no records with me

211 showing that.

Q. How much bagging did you handle that year?

A. My recollection is that the only bagging we handled that year was a carry-over of 185,000 yards, of which we carried over into the succeeding season 35,000 yards.

Q. That is, you carried 185,000 yards over from 1915?

A. Yes, sir.

Q. And in 1916 you sold 150,000 yards and carried over 35,000?

A. I am referring now to bagging and not to sugar bag cloth.

Q. You handled some sugar bag cloth for the cotton, too?

A. Yes, sir.

Q. How many ties did you carry over from 1915?

A. From 1915—I do not remember.

Q. Do you remember whether you carried any over from 1915?

A. Wait just a moment. No; my recollection is that we closed out all of our ties at the end of December.

Q. 1915?

212 A. Yes, sir; 1915, and carried over the bagging.

Q. You had ties, and sold them out in a lot, did you not, at the end of the year 1915?

A. Yes, sir.

Q. To whom did you sell those ties—do you remember?

A. I sold them to M. M. Graves Company, of Houston.

Q. You do not know how many they were—just in a general way, I mean?

A. Approximately 6,000 bundles.

Q. When it came to 1916, what efforts did you make to get ties—just tell us in a general way.

A. I tried to buy ties from Warren, Jones & Gratz, to cover the bagging which we were carrying over.

Q. You were unable to do that?

A. What is that?

Q. You were unable to get the ties?

A. I was unable to get the ties from them to cover the bagging.

Q. What other efforts did you make to get the ties, and from whom, in 1916?

A. I bought from M. M. Graves, and I bought some from

213 McMillan, in New Orleans. I think that about represents it.

Q. You were able to get what ties you needed in 1916 from Graves & Company in Houston, and from McMillan in New Orleans?

A. Yes, sir.

Q. You made no other efforts, except from those two parties?

A. Yes; I made an effort to get them from other parties. I do not remember the details now. I would have to refresh my memory from the correspondence.

Q. How about the Atlantic Steel Company—did you try to get any from them?

A. I did in 1917, but I do not remember about 1916.

Q. You do not remember whether you did?

A. No, sir.

Q. Did you try to get them from the Pittsburgh Steel Company?

A. I did in 1917, but I do not remember about 1916.

Q. Did you try to get them from the Connors-Weyman Company, in Birmingham?

A. I did in 1917, but I do not know about 1916. I will have to refer to my papers to answer those questions.

214 Q. You did not have much trouble, did you, in getting your ties—you got them all right in 1916? You say you can not remember now that you even tried to get them from the other people. If you had had a great deal of difficulty, you would probably remember now, would you not?

A. I do not remember now. It is too long ago. I know we were skirmishing around to find ties to cover the bagging and sugar cloth.

Q. You got your ties?

A. Yes, sir.

Q. But you do not know—you do not remember now whether you had much difficulty or not?

A. It would depend on what you mean by difficulty.

Q. You can not remember whether you tried to get them from the Atlantic Steel Company or the Pittsburgh Steel Company or the Birmingham concern, or other places. If you had a great deal of difficulty in getting ties you would probably remember it, would you not? I am just trying to get your idea.

A. All I know is we got them, paying advanced prices.

215 Q. Do you know how much of an advance in price you paid over the price Warren, Jones & Gratz had been selling them?

A. I do not remember exactly in 1916.

Q. Did you try, during 1916, to buy ties from P. P. Williams & Company, of Vicksburg?

A. If I did I have no record of it in the files. I know I have made some inquiries through Williams, but I do not remember when.

Q. Did you have any ties left over in 1916, which you carried into this year?

A. A limited quantity; yes, sir.

Q. How many? Can you give us an idea of how many ties you carried over from last year?

A. I do not remember the quantity. It was not large.

Q. How about the bagging—did you carry over any bagging from last year?

A. Yes, sir; we carried over some bagging from last year—about 35,000 yards.

Q. About 35,000 yards?

A. Yes, sir.

216 Q. Mr. Platter, if you had not sold these ties to Mr. Graves at the end of the year 1915, you would have had plenty of ties, would you not, to have covered your sales of bagging in the year 1916—is not that true?

A. Well, they would not quite cover it.

Q. Not quite cover it?

A. No, sir.

Q. But substantially so?

A. Well, I would not say so. We needed more ties, on account of handling the sugar cloth.

Q. Sugar cloth?

A. Yes, sir; in 1917 we needed in addition to——

Q. Well, now, how many did you try to buy in 1916, over and above the amount that you received—you got all, I understand, that you tried to buy?

A. In 1916?

Q. Yes.

A. This telegram—we tried to buy in June 6,000 bundles in addition to the additional purchases of bagging we were making.

Q. You made additional purchases of bagging?

A. We did not. We were going to.

Q. You did not?

217 A. No, sir.

Q. In addition, you were trying to buy 6,000 bundles in June, 1916, from Warren, Jones & Gratz?

A. I did not catch that.

Q. You tried to purchase 6,000 bundles of bagging and 6,000 bundles of ties?

A. Yes, sir.

Q. That is just the number, is it not, when you think about the matter, that you sold to Mr. Graves at the end of the season of 1915?

A. Approximately.

Q. Did I understand you to say you had a telegram from Warren, Jones & Gratz in September, 1916, offering to sell you ties without bagging?

A. I think so. [After looking through some papers.] Yes; on September 25.

Q. September 25, you received this telegram which I hand you from Warren, Jones & Gratz [handing telegram to witness]?

A. Yes, sir.

Mr. ROBERTS. Let us see that, if you please.

(The telegram was thereupon handed to Mr. Roberts.)

218 Mr. BIGGS. Have you any objection to my reading this into the record at this time?

Mr. ROBERTS. Surely I object to it.

The EXAMINER. Not at this time, Mr. Biggs.

Mr. BIGGS. Have you any objection to allowing us to have this telegram?

The WITNESS. I have no objection.

Mr. BIGGS. I ask that it be marked for identification.

Mr. ROBERTS. I object to its being used. Mr. Biggs is not offering any evidence.

Mr. BIGGS. I do not understand that in cross-examination I haven't the privilege and right of having testimony of the witness to put into the evidence. If it is against the rules of this Commission, it is not against the rules of law.

The EXAMINER. I think he can refresh the memory of the witness by having him look at any communication that you desire and asking the witness any questions along that line, but at this time I do not think it would be regular for you to introduce a paper as evidence.

219 By Mr. BIGGS:

Q. You received this telegram, as I understand it, on or about the date it bears?

A. Yes, sir; here is the original of it [exhibiting paper].

Q. Now, in 1916, did you tell Warren, Jones & Gratz that you had carried over American bagging from 1915?

A. In 1916?

Q. Yes.

A. Yes, sir; this telegram refers to that.

Q. I do not think you understood my question.

A. Here is the telegram [indicating paper].

Q. Oh, is there another telegram?

A. Yes, sir.

Q. I did not know about that telegram.

A. I pinned that telegram there to keep the record straight.

Mr. Biggs. I object to that. He is pinning two of them together, one of which has not been introduced in evidence.

Mr. Roberts. I did not do that. I did not know about that.

Mr. Platter. I did it to complete the record.

220 Mr. Roberts. Now, what is the question, Mr. Biggs?

Mr. Biggs. There is no question at the moment.

By Mr. Biggs:

Q. Afterwards, during the year 1916, Warren, Jones & Gratz offered to sell you ties, didn't they?

A. Yes, sir; in September.

Q. In September?

A. Yes, sir.

Q. Now, the ties that you bought from Graves in 1916 were Arrow ties?

A. Yes sir.

Q. You do not mean to give the impression here, do you, in your testimony, in answer to Mr. Roberts' questions, that these were second hand ties—they were new Arrow ties, were they not?

A. No, sir; I said in my testimony that the specifications were for new Arrow ties.

Q. Did you buy some ties from Mr. McMillan in New Orleans?

A. Yes, sir; I bought something like a thousand bundles from McMillan.

221 Q. Mr. Platter, as I understand you, you have brought here correspondence—all the correspondence that you have had with tie manufacturers and tie dealers in 1916?

A. And 1817.

Q. And 1917?

A. Yes, sir.

Q. You are not able to say whether or not you tried to buy ties in 1916 elsewhere than from Warren, Jones & Gratz and from McMillan and from Graves?

A. Not without referring to the correspondence.

Q. Would you mind looking over your correspondence there—would it take you a long time to ascertain that fact?

A. No, sir; I think not. I asked the Sharon Steel Company's representatives for prices.

Q. In 1916?

A. Yes, sir; and we were advised that they would not be in a position to furnish us. I tried to buy of Mente & Company, of New Orleans; I tried to buy of the Caroline Bagging Company, at Henderson, North Carolina; from M. M. Graves Company, F. Cannon Commission Company, of Galveston, and made injuiry
222 of brokers at Waco, the J. H. Harvey Commission Company. That is as far as my record in 1916 show.

Q. These parties that you say you wrote to in reference to this tie situation in 1916—did they offer you ties, any of them?

A. The Sharon Steel Company's representative could not offer us ties; the Carolina Bagging Company, on June 26, 1916, advised they could not quote on new Arrow ties, but offered second-hand ties; the F. Cannon Commission Company, of Galveston, were willing to sell American and Texas bagging with ties, but advised us they could not sell ties without bagging—the M. M. Graves Company, of Houston, offered us ties, and Mente & Company, at our request, gave us new ties in place of some spliced ties we had under contract with them, in connection with sugar bag cloth. That is about as far as I can answer your inquiry.

Q. These which you have named here are the places you tried to buy ties, and show what success you had; but eventually you closed the contracts——

A. Yes, sir; that refers to the particular season—June——

Q. 1916?

223 A. When the market opened.

Q. That is just the question. The efforts you gave us as made by you, were made in June?

A. Yes, sir.

Q. And later on there were some other negotiations?

A. Yes, sir; there were some other negotiations.

Q. Now, you did, as I understand you, in 1916, buy the ties you required in your business, from Graves, of Houston, and from McMillan, of New Orleans, besides the ties that you got from Mente & Company here in the way in which you have just testified?

A. Yes, sir.

Q. Mr. Platter, did you make any complaint to the Federal Trade Commission?

A. We did not.

Q. You have had no trouble in buying ties this year—1917?

A. Wait a moment. My answer—you asked me if I had made any complaint to the Federal Trade Commission?

Q. Yes.

A. We made no complaint to the Federal Trade Commis-
224 sion, but following some correspondence from them we detailed certain facts to them which you may interpret as a complaint.

Q. You answered their communications?

A. Yes, sir; we answered their communications.

Q. And you told them about what you have testified to here today—is that true in a general way?

A. I have the letters here and can show you them, and can answer that more definitely by showing the letters.

Q. Did anybody come to see you representing the Federal Trade Commission?

A. No, sir.

Q. You simply got an inquiry from them and you answered it?

A. Yes, sir.

Q. From whom did you buy your ties and bagging in 1917?

A. Well, in 1917, we asked Warren, Jones & Gratz to take our contract for bagging and ties and sell us an extra quantity of ties. The quantity I do not remember, but I think it was 7,500 bundles. That was the day before the prices were formally opened and was in talking with their representative. Previous to that time I
225 had made efforts to insure a supply by writing letters to the various manufacturers, and also dealers, which correspondence I have here and can give you.

Q. Now, you do not answer my question. From whom did you eventually buy ties and bagging in 1917?

A. Well, I bought bagging and ties from Warren, Jones & Gratz; ties from M. M. Graves, and a few ties from the Wisrodt Grain Company at Galveston, and some spliced ties from Mente & Company.

Q. Now, you had a contract, didn't you, for 1917, on which you bought certain ties, and certain bagging, from Warren, Jones & Gratz?

A. Yes, sir.

Q. You did not take all the ties and bagging that that contract called for?

A. In 1917?

Q. In 1917.

A. We asked them to reduce it to 100,000 yards.

Q. Which they did?

A. Which they did; yes, sir.

226 Q. How about you tie supply which you had under contract with them—did you ask them to reduce it?

A. We did not ask them to reduce the ties.

Q. Just the bagging?

A. Yes.

Q. Which they did?

A. Yes, sir.

Q. They reduced the bagging?

A. Yes, sir.

Q. Now, you always, in this business, carry ties and bagging—they go together, like a suit of clothes, a pair of pants and coat—in the trade, ties and bagging are sold by the dealers, are they not, always together?

A. Not always. Of course, they are ultimately used together, but they are not always sold together.

Q. General speaking, is not that true? Of course, there are exceptions to all rules.

A. I think they have been tied up closer together the last year or two than previously.

Q. Now, in 1916, you were endeavoring—were you endeavoring to buy any more ties than the required amount which went with the bagging which you had?

227 A. My impression was that we were asking for less than the amount required for the bagging.

Q. For the bagging?

A. Yes, sir.

Q. How many ties—what is the proportion that is required? For instance, if you are buying 100,000 yards of bagging, what amount of ties is required to go with that amount of bagging?

A. It takes a bundle of ties for each thirty yards of bagging or two bundles of ties for each 60 yards.

Q. Do you know of any dealer who deals solely in ties or solely in bagging?

A. I know—I have come in contact with dealers who have tried to deal solely in bagging.

Q. Tried to?

A. Yes, sir.

Q. The truth of the matter is they go together. That is the general rule, is it not, Mr. Platter—anybody in the bagging business has ties to sell, and anybody in the tie business has bagging to sell—they go along together, do they not?

A. They are ultimately used together.

228 Q. They are handled by the jobbers together, are they not?

A. Not always.

Q. Do you handle any foreign bagging?

A. We have handled no foreign-made bagging for the past two years.

Q. Did you try to buy any?

A. We were not interested in it.

Q. Now, all things being equal as to prices, Mr. Platter, from whom did you prefer to buy your bagging and ties?

A. We have always given Warren, Jones & Gratz preference on them for as many years back as I can remember.

Q. Can you name us a jobber in the South or anywhere else that handles bagging alone without ties or ties alone without bagging?

A. Let me understand you, sir. Do you mean a dealer who never sells any ties but does sell bagging, or do you mean a dealer who sells ties alone?

Q. No; I mean a jobber that—you know what a jobber is in the business?

229 A. That is pretty difficult to define. People have been puzzling with that question a great many years.

Q. You know more about that than I do, Mr. Platter, I suspect. Do you know of any jobber—what is generally termed a jobber in the trade—do you know of any jobber who handles bagging alone without ties? If you do, give us his name.

A. Do you mean—your question I can not answer unless I understand it. Do you mean a jobber who never sells any bagging, but who does sell ties?

Q. Yes. Do you know such a jobber?

A. I do not know of one.

Q. You do not know of one?

A. No, sir.

Mr. BIGGS. That is all. You may inquire.

Redirect examination by Mr. ROBERTS:

Q. You spoke about making efforts during the season of 1916 and 1917 to secure ties. Did those people—did any of those manufacturers quote you any prices, or offer you any, except the Warren, Jones & Gratz firm?

230 A. Now, your question is pretty broad. You say 1916 and 1917.

Q. I refer to the Connors-Weyman Company and the Atlantic Steel Company, and——

A. Yes. In 1917 we had prices from these other manufacturers that you mention.

Q. Did you, in 1916, have any quotations from those other manufacturers?

A. Not that I can recall.

Q. Why did you not buy from them in 1917, if you had quotations from them, or could you buy from them advantageously?

(After a pause.)

Q. I do not know that you need look for that any further.

A. I can answer you.

Q. Well——

A. The Pittsburgh Steel Company would offer us no ties.

Mr. BIGGS. Speaking of 1917?

Mr. ROBERTS. That is 1917. Did you try the Atlantic Steel Company?

A. We did, and they had no ties to offer us.

231 The EXAMINER. Is this 1916 or 1917?

The WITNESS. 1917.

The EXAMINER. 1917?

The WITNESS. Yes, sir.

By Mr. ROBERTS:

Q. Did you try the Connors-Weyman Company, of Birmingham?

A. We did.

Q. What did they say?

A. We offered them an order for 10,000 bundles at Warren, Jones & Gratz's opening prices, and they wired that the opening price for ties was not interesting for Texas delivery.

Q. How about the Atlanta crowd—what did they say?

A. I had not finished my answer. I then asked them to wire a price, and they offered five to ten thousand bundles at a price which was entirely too high for us to consider.

Q. What did the Atlantic Steel Company say, if you tried them?

A. I do not remember their answer in June, but they had no ties to offer.

Q. So that, I believe you stated a while ago, you were
232 unable to buy from any manufacturer new ties, except from Warren, Jones & Gratz—is that a fact?

Mr. BIGGS. What is your question?

(The stenographer repeated the question.)

The WITNESS. No, sir; I did not state that.

Mr. ROBERTS. I so understood you.

By Mr. ROBERTS:

Q. What other manufacturer were you able to buy from?

A. I have just stated that the Connors-Weyman Steel Company offered us ties.

Q. You said it was at a price entirely too high for you to consider, as I understand you; is that a fact?

A. Yes, sir.

Mr. ROBERTS. That is all, Mr. Platter.

Mr. BIGGS. May I recross for just a moment?

The EXAMINER. Very well.

Recross-examination by Mr. BIGGS:

Q. You told Mr. Roberts about these efforts you made in
233 1917 to buy ties direct from the manufacturers; that is, the Atlantic Steel Company, the Birmingham concern?

A. Yes, sir.

Q. Are those the only efforts you made in 1917, outside of what you have told us, to buy ties—you did buy them, as I understood you, from Warren, Jones & Gratz in 1917—some?

A. Some.

Q. In 1916, did you make the same efforts to buy them from these same manufacturers, the Atlantic Steel Company and Connors-Weyman Company?

A. I did not make as strong an effort as I did in 1917, and I do not have any of the records to show that I had at that season any correspondence with these mills.

Q. Did you have any correspondence, or try to buy any ties in 1916 or 1917, from the Pittsburgh Steel Company?

A. Yes, sir.

Q. Which year?

A. 1917.

Q. 1917?

A. Yes, sir.
Mr. BIGGS. That is all.
(Witness excused.)

234 W. F. BRIDWELL was called as a witness, and being first duly sworn by the examiner, testified as follows:

Mr. ROBERTS. Your Honor, Mr. Thom will examine Mr. Bridwell. He has just been conferring with him.

Direct examination by Mr. THOM:

Q. State your full name, please.
A. W. F. Bridwell.
Q. And your residence.
A. Little Rock, Arkansas.
Q. And your business.
A. Broker.
Q. In what?
A. Cottonseed products and bagging and ties.
Q. How long have you been in that business, Mr. Bridwell?
A. Two years.
Q. 1916 and 1917?
A. Yes, sir.
235 Q. Did you have any difficulties in the year 1917 in obtaining cotton ties?
A. I did.
Q. Please state, in your own words, what those difficulties were.
A. Well, I sold quite a few of my customers bagging before the tie market opened, and when the tie market opened of course I had to make inquiries for ties to go with this bagging, and I was not able to secure sufficient ties from the factory, and I tried to buy ties from the jobbers and manufacturers.
Q. What efforts did you make?
A. Well, I wired and wrote and made offers on ties.
Q. To whom?
A. Well, I wired Warren, Jones & Gratz and P. P. Williams and Company and the Pittsburgh Steel Company.
Q. I show you a telegram dated May 19. Will you state what that was?
A. I received this telegram in 1917.
Q. Received that in due course of business of the telegraph office?
A. Yes, sir.
236 Q. Around about that date?
A. Yes, sir.
Q. Was that pursuant to an inquiry for ties?
A. Well, I wired these people and offered them the prevailing price for ties, and this is the answer I received.
The EXAMINER. Do you want to introduce that in evidence?
Mr. THOM. I introduce that as an exhibit.

(The telegram referred to was thereupon received in evidence and marked by the stenographer "Bridewell Exhibit No. 1," and the same is as follows:)

85 mhhn 350 p. m. 6.

POSTAL TELEGRAPH-CABLE CO.,
Vicksburg, Miss., May 19.

W. F. BRIDEWELL AND CO.,
Little Rock, Ark.

Will not sell ties without bagging.

P. P. WILLIAMS AND CO.

By Mr. THOM:

237 Q. You were subpœnaed to bring certain letters, telegrams, and so forth, were you not?

A. Yes, sir.

Q. Did you bring them

A. Yes, sir; I brought what I have.

Q. Why did you not bring the rest—you had some more, did you not?

A. Yes, sir.

Q. Why did you not bring the rest? I am trying to get the facts.

A. I sent them to the factory. They instructed me to buy some ties, and after I tried to buy the ties and could not buy any I sent the correspondence to them in the way of a report as to what I had done for them.

Q. Were you able to get the correspondence back?

A. No, sir; I did not get it back.

Q. To what factory did you send them?

A. The Carolina Bagging Company.

Q. Do you bear any relation to them?

A. How is that?

Q. Do you bear any relation to them.

A. Yes, sir.

238 Q. In what capacity?

A. Why, I represent them in my State.

Q. What is their business?

A. The manufacture of bagging.

Q. Do they manufacture ties?

A. No, sir; they do not manufacture ties.

Cross-examination by Mr. BIGGS:

Q. Have you ever been to the plant of the Carolina Bagging Company, Mr. Bridewell?

A. No, sir.

Q. Never have been there?

A. No, sir.

Q. Are you positive—do you wish to be positive in your statement that they do not handle ties?

Mr. THOM. I did not ask that question. I asked if they manufactured ties.

Mr. BIGGS. Well, manufacture or sell ties.

Mr. THOM. I asked him—I did not say anything about sell.

Mr. BIGGS. I am asking if they sold ties.

Mr. THOM. If I had put the question that way he might have given a different answer. The way you put the question might give a wrong impression of the witness' testimony.

Mr. BIGGS. I did not mean to give that impression. Do you understand me?

The WITNESS. No, sir.

By Mr. BIGGS:

Q. Please state again whether or not it is a fact that the Carolina Bagging Company not only makes ties, but buys ties from other people and sells them with the bagging they make.

A. Yes, sir; they buy ties from other people to sell with the bagging.

Q. Do they make any ties themselves?

A. Well, no; they told me they did not make any ties.

Q. You only think that from the fact that they told you that?

A. They wrote me and told me that.

Q. That is all you know about it—what they say to you?

A. I have never been to the factory. My two years' relations with them is what has impressed me that they do not make them, but buy them.

Q. Don't you know they make second-hand ties?

A. They buy scrap ties and bind them together and make pieced ties.

Q. They also make whole ties, too, do they not, or do you know?

A. No, sir; they do not make whole ties.

Q. Are you what is known as a dealer in bagging and ties, or are you a broker?

A. A broker.

Q. And you aim to buy your bagging and ties from manufacturers, like you represent, the Carolina Manufacturing Company, and then sell them at an advance or commission?

A. I do not sell on a commission. I sell on their prices, and they pay me a brokerage.

Q. I understood you to say this trouble you had was in 1917, in getting ties?

A. Yes, sir.

Q. That you tried to get ties from Warre, Jones & Gratz, P. P. Williams and Company, and the Pittsburgh Steel Company?

A. Yes, sir.

Q. Did you try to get any from the Carolina Bagging Company, the people you represented—your principals?

A. Yes.

Q. You did?

A. Yes, sir.

Q. You were unable to get any?

A. I was unable to get sufficient ties to go with the bagging I sold.

Q. Did they sell you all that you asked them to sell you, or did you try to buy more from them than you were able to get?

A. I explained that a while ago, from the fact I sold a great deal of bagging to these people before the tie market opened, and when the tie market opened, of course, my customers that I sold bagging to wanted ties to go with them, and I was after them to try to buy ties somewhere else, as our people were unable to get sufficient ties to go with the bagging.

242 Q. You had sold your customers the bagging made by the Carolina Bagging Company, hadn't you?

A. Yes, sir.

Q. Why didn't you buy your ties, or did you buy your ties, from the Carolina Bagging Company to go with the bagging?

A. Yes, sir; I got some from them.

Q. I will ask you whether you got all you wanted?

A. No, sir.

Q. You were not able to get all you wanted?

A. No, sir.

Q. And they furnished you the bagging, but were not able to furnish you the required number of ties to go with the bagging?

A. They instructed me to try to buy some ties over our way to help out the situation. They were unable to get sufficient ties to go around, and that is the reason I tried to buy these ties from the other people.

Q. The efforts you made to try to buy these ties from other people were all by correspondence or telegraph?

A. Yes, sir.

Q. You had no personal conversations with them—with any of them?

243 A. Not with those three concerns. I had personal conversations with some small dealers.

Q. Your relations with them were entirely by correspondence, with Warren, Jones & Gratz, P. P. Williams & Company and the Pittsburgh Steel Company?

A. Yes, sir.

Mr. Biggs. I move, on the record, that the witness' testimony be stricken out, because what he has testified about is in writing, and the writing is not produced.

Mr. Thom. Mr. Examiner, my reason for asking him why he did not produce the evidence—the documentary evidence—was for the purpose of showing his inability to produce it, and, under the rules of the Interstate Commerce Commission, which are analogous to the rules of the Federal Trade Commission, when primary evidence is accounted for, secondary evidence is admissible.

Mr. BIGGS. As I understand, this is not the place to argue that point.

The EXAMINER. No; note your objection on the record.

Mr. ROBERTS. He stated he sent the correspondence to the Carolina Manufacturing Company.

944 The EXAMINER. We will note Mr. Biggs' objection to this testimony.

By Mr. BIGGS:

Q. You did not buy any of the stuff yourself—you simply sold it on commission to other people; is not that true? You are not a dealer, but a broker, working on commission?

A. Yes, sir.

Q. And have been in the business for two years?

A. Yes, sir.

Q. Did you complain to the Federal Trade Commission at any time in reference to your difficulties in buying ties in 1916 or 1917, or any other time?

A. I did, in this way: They wrote me and asked if I had been able to buy ties, and I wrote them and told them I had not.

Q. How many ties did you handle last year and this year, Mr. Bridewell—sell to your customers?

A. Both years combined?

Q. No; each year—give them separately?

A. Ties and bagging, or just ties?

Q. Just ties?

A. Why, I handled about 35,000 or 40,000 bundles.

945 Q. Bundles of ties?

A. Yes, sir.

Q. In each year?

A. In 1916.

Q. In 1916?

A. Yes, sir; and just about the same amount in 1917.

Q. How much bagging did you handle and sell in 1916?

A. In 1916 I handled about 25,000 rolls, 60-yard rolls.

Q. 25,000 60-yard rolls?

A. Yes, sir.

Q. That figures out a million and a half yards. And during that year you handled about 35,000 bundles of ties?

A. Yes, sir.

Q. How much bagging did you handle in 1917?

A. I handled more bagging in 1917 than I did in 1916. I sold quite a little bagging that I did not furnish any ties with. I handled something like a million and three-quarters yards in 1917.

Q. Mr. Bridewell, did you sell all of the ties that you bought—you did not buy any yourself—you sold about 35,000 bundles of ties?

946 A. Yes.

Q. From whom did you get these ties?

A. I would sell them to the account—for the account—of the Carolina Bagging Company.

Q. Where did they come from?

A. I could not tell you. They were new Arrow ties with the exception of a small lot of pieced ties. I did not sell the pieced ties for wrapping cotton. It is generally to go around linters. We can not sell a ginner pieced ties.

Q. Don't you know to whom you sold those ties in 1917?

A. All I know is they came out of the River & Rail Storage Company at Memphis.

Q. From whom did you get them?

A. I explained that a while ago. I represent the Carolina Bagging Company, just as a jobber, and I sold on their quotations, and when they told me to sell so much bagging and so many ties I sold on their quotations. I sent the orders into the factory; that is, the Carolina Bagging Company.

247 These ties that you sold were really the ties of the Carolina Bagging Company and you simply represented them as a broker and sold them to various people?

A. Yes, sir.

Q. And they had them in Memphis?

A. Yes, sir.

Q. And they came out of the warehouse in Memphis?

A. With the exception of a few cars that came in solid car lots from Pittsburgh.

Q. That is the same situation that existed in 1917, as to the way you did the business—you were always selling for the account of the Carolina Bagging Company, and the ties were delivered from Memphis?

A. Yes, sir.

Mr. BIGGS: That is all.

Mr. THOM: Just one question, Mr. Bridewell.

Q. When you stated that you made a complaint to the Federal Trade Commission, did you not mean that you wrote them in answer to an inquiry from the Commission?

248 Redirect examination by Mr. THOM:

A. Yes, sir.

Q. You made no complaint on your own initiative?

A. Yes, sir.

Q. You made no complaint on your own initiative?

A. No, sir; none at all.

(Witness excused.)

G. H. TOWLER, was called as a witness, and, being first duly sworn by the examiner, testified as follows:

Direct examination by Mr. ROBERTS:

Q. What are your initials, Mr. Towler?

A. George H. Towler.

Q. Where is your place of business, Mr. Towler?

A. Arkansas—Fordyce.
Q. What is the name of your firm?
A. The Collins-Hampton Grocery Company.
Q. Fordyce, Arkansas?
A. Correct, sir.
Q. Now, speak a little louder, please. What relation do you sustain to that firm?
A. I am manager, sir.
Q. How long have you been manager?
249 A. Since the organization, 12 years ago.
Q. Please state whether or not this firm has been engaged in buying and selling bagging and ties during that 12 years.
A. Yes, sir; we sell bagging and ties every year, but I might explain that we are located in the yellow pine and oak belt, and not so much in the cotton belt, and for that reason our sales are limited. We sell, perhaps, ties and bagging to cover 3,000 bales per annum.
Q. And that is about the extent of your business?
A. That is the extent of our business; yes, sir.
Q. Have you any correspondence to show the methods of P. P. Williams & Company or Warren, Jones & Gratz, in the bagging and tie business, either for last year or for this year, and if so, get them out and let us have them.
A. When we entered the business, I might explain that Warren, Jones & Gratz had the local brokerage business in Pine Bluffs. They were of considerable advantage to us for, being small dealers in the article, they could ship us a small quantity of bagging and ties at the tail end of the season that did not force us to carry over large quantities of them. They, as a rule, had plenty of
250 bagging and ties assembled in Memphis and could fill our orders for carloads of mixed bagging and ties, which embraced a thousand patterns. We sold about three cars of ties through the season, and seldom carried over much. The brokerage concern was discontinued, as far as we knew, and for two or three years, as our records in the office will show—but I am not able to establish that here—we did business with these people direct, as far as we knew.
Q. Warren, Jones & Gratz?
A. Yes, sir; Warren, Jones & Gratz. When the season opened, which was usually in April, in our country, our local buyers wanted to place their orders for bagging and ties, to be certain to get plenty, and on time, and they used about two-thirds of what we handled, and we were able to place these orders direct; that is, after the discontinuance of the brokerage concern at Pine Bluffs—we were able to get the bagging and ties in a manner that suited our convenience very well from Warren, Jones & Gratz.
We got quick service from Memphis in assembled cars. Beginning, perhaps, with the season of 1913 or 1914, we were unable to get bagging and ties from Warren, Jones & Gratz. We

251 made no investigation, however, because we were able to buy them elsewhere, and did do it, and have bought since that time from Mr. Bridewell, who just preceded me—W. F. Bridewell & Company, of Little Rock. When the season opened this year we wrote Warren, Jones & Gratz, with a view *of doing* business with them, or of lining up with prices, preparatory to doing business, and have our letter here which I wrote first under date of April 21 last.

Q. You need not read the letter. Just identify it.

A. I need not read it?

Q. No.

A. We have also their reply under date of April 23rd.

Mr. Biggs. Is that 1917?

A. Yes, sir.

By Mr. Roberts:

Q. This is not what I want.

A. Very well, sir; we have another batch.

Q. What I want is anything going to show they refused to sell you ties without bagging. This letter is from you [exhibiting letter]?

A. Yes, sir.

251 Q. What about a conservation that you had with the representative of Warren, Jones & Gratz?

A. What is the date of that letter, please, Mr. Roberts?

Q. August 14, 1917, is when you wrote to the Commission about this?

A. I did that; yes, sir; we were able to——

Mr. Biggs. I object to the conversation had with the representative of Warren, Jones & Gratz until it is shown who the representative was, the time of the conversation, and what——

Mr. Roberts. I will come to that.

By Mr. Roberts:

Q. Give the date of that conversation as nearly as you can, and with whom it was.

A. Why, I think the conversation occurred in May.

Q. With whom, now?

A. With Mr. Wilbur Orto, of the brokerage firm of Orto Brokerage Company, of Pine Bluffs, Arkansas.

Q. Whom did that brokerage firm represent at that time?

A. They had the account of Warren, Jones & Gratz for bagging and ties in our country.

253 Q. What did Mr. Orto tell you in that conversation?

Mr. Biggs. I object to the conversation.

The Examiner. Mr. Biggs' objection to the conversation may be noted.

Mr. Biggs (continuing). Because there is no proper showing that the party, Orto, to the conversation, pretended to represent—that he did in fact represent Warren, Jones & Gratz.

Mr. Roberts. I will bring that out.

By Mr. ROBERTS:

Q. What did Mr. Orto say in that conversation to you about their supplying your needs for ties?

A. He advised that he could not sell me ties without bagging.

Q. Without bagging?

A. Yes, sir.

Q. Did he give you any reason why that was true?

A. I do not recall, sir, now. It was a short conversation.

Q. State whether or not you then decided to buy bagging from him—did you buy bagging from him?

254 A. We did not, sir. We had already bought bagging to cover our wants a few days before. Do you want to know the name of the firm we bought from?

Q. Yes.

A. From the Bridewell Brokerage Company, from the Carolina Bagging Company, of Henderson. But they advised us they did not have ties, and we undertook to cover our wants for the trade—I mean the retailers were feverish; they wanted to place their orders as soon as possible, an account of the advance in these commodities, and on account of the uncertainties in getting them as a result of the war. We were unable to buy any, but later we wrote to the Carolina Bagging Company, or they to us—I will not be certain which—not the Carolina—but to the Bridewell Commission Company, and they wrote us that they had been able to procure ties and would sell us ties to take care of the bagging they had already sold.

Q. And you got them from them?

A. Yes, sir.

Mr. ROBERTS. That is all. You may question, Mr. Biggs.

By the examiner:

255 Q. You say, Mr. Towler, that these people represented had an account with Warren, Jones & Gratz, and represented them in that district?

A. As a broker; yes, sir.

Q. They sold just on commission, then, for Warren, Jones & Gratz?

A. Yes, sir.

Q. That is the way it was represented to you?

A. Yes, sir; a broker occupies that position. He goes between the manufacturer and the jobber.

Q. He did not sell them on his own account?

A. No, sir; I did not understand it otherwise.

Q. I just wanted to get the relationship you claimed or considered they sustained?

A. Yes, sir.

Cross-examination by Mr. BIGGS:

Q. When was this conversation—state that as nearly as you can?

A. I did not keep a written record of our long-distance talks.

Q. This was over the telephone?

256 A. A long-distance telephone talk.

Q. The Orto Brokerage Company—you had been buying from them before, had you not?

A. We never bought from them. As I explained at the outset, they had a representative, the March Commission Company, of Pine Bluff, but for some reason this connection had been discontinued. I know we did buy direct from Warren, Jones & Gratz for three years after this was discontinued.

Q. Had you been buying from the Orto Brokerage Company prior to——

A. We had bought other articles in the purview of his business. As I understood, he had acquired their account very lately—perhaps in the year 1917.

Q. This year?

A. Yes, sir.

Q. All you know about it is he said he was handling goods for Warren, Jones & Gratz?

A. Yes, sir; it was a well-known fact among the jobbers that the Orto Brokerage Company, of Pine Bluff, at least during this year, represented the firm of Warren, Jones & Gratz for that portion of the State.

257 Q. You do not mean for us to understand that he told you Warren, Jones & Gratz would not sell ties without the bagging; he meant he would not sell ties without bagging—is not that true?

A. Well——

Q. I want to get what the conversation was.

A. Well, if a retailer was buying personally from me a bill of goods, who represented the Collins, Hampton Grocery Company, and I told him I could not sell certain articles, I guess that would mean I could not, as the representative of the Collins, Hampton Grocery Company sell them.

Q. I do not know about that, but I asked what the conversation was at the time.

A. I am giving it as briefly as I can.

Q. The Orto Brokerage Company said they could not sell you ties without bagging?

A. Yes, sir.

Q. That is what he said?

A. Yes, sir.

Q. And you got them from Mr. Bridewell afterwards?

A. Yes, sir; from Mr. Bridewell afterwards.

258 *A. Yes, sir; from Mr. Bridewell afterwards.*

Q. Did you have any communication direct with Warren, Jones & Gratz in 1917 about ties?

A. I have a letter from them, that Mr. Roberts has, and one from us to him.

Mr. Biggs. May I see that letter?

Mr. ROBERTS. A letter from whom?
The WITNESS. Warren, Jones & Gratz.
Mr. ROBERTS. I do not think you have any letter showing that.
The WITNESS. Yes, sir; I think you will find it.
Mr. ROBERTS. I did not understand what you said last.
The WITNESS. This is a letter dated the 23rd of April.
Mr. BIGGS. Is this the letter you refer to [exhibiting letter]?
The WITNESS. Yes, sir.
Mr. BIGGS. This is April.

By Mr. BIGGS:

Q. So, in 1917—April 21—you wrote a letter to Warren, Jones & Gratz, and received a reply on April 23, 1917?

259 A. Yes, sir.

Q. And that was before the market opened up, was it not?

A. It must have been before the market opened up on ties, as far as they were concerned.

Q. This is the only time, during 1917, you tried to buy ties from Warren, Jones & Gratz, and that was before the market opened?

A. That covers the entire correspondence.

Q. The entire correspondence?

A. Yes, sir.

Q. Inasmuch as you had always bought from Warren, Jones & Gratz, Mr. Towler, previous to that, if you wanted ties in 1917 why didn't you write to them and ask them for them?

A. That letter was for that purpose. Didn't you read that letter?

Q. That was before the market opened.

A. April 21?

Q. Yes.

A. We are in the habit of buying our bagging and ties in April.

260 Q. Don't you know that the market had not opened up; that you had never bought any ties from Warren, Jones & Gratz at any time in April; that the market does not open until later in the spring? It opened in the latter part of May this year?

A. Yes, sir; and this year was later than usual.

Q. When was it—was it about this time you bought these ties from the Carolina Bagging Company?

A. No, sir; it was later than that, but not very much later. I could not state definitely.

Q. But you made no other effort later on to buy ties from Warren, Jones & Gratz?

A. Well, I had no encouragement under that letter of April 23rd.

Q. Warren, Jones & Gratz never refused to sell you ties in 1917, did they?

A. Do you think there is any encouragement to buy from them in that letter?

Q. I don't want to argue that with you. I am not allowed to put that letter in. I do not want to discuss with you about that

letter. I asked you if, at any time, they refused to sell you ties in 1917 on your request?

261 A. Their representative at Pine Bluff told me he could not sell ties without bagging.

Q. Outside of that, there was no other refusal?

A. Except that letter.

The EXAMINER. I will state, Mr. Biggs, that any letter here which has been proven as the letter of any individual party, that later on, if you choose to introduce evidence, it will not be necessary for you to prove that letter further. You can introduce it.

Mr. BIGGS. I understand that, but unless the letter is in evidence I do not see how I can very well discuss it with the witness.

The EXAMINER. I think it is regular, though, that you can ask any question in regard to the letter, but I do not think it would be quite regular for you to introduce the letter at this stage.

Mr. BIGGS. Is it not true that you know that in this letter that you referred to—the letter of April 23, 1917, from Warren, Jones & Gratz, in which they fail to agree to sell you ties—that that was a month before the market opened at least?

262 A. This year, and yet we bought bagging and ties in the month of April.

By Mr. BIGGS:

Q. It is a fact that this letter from them, in which they failed to quote you ties, and gave as a reason for that, on account of the steel manufacturers—the condition of the steel market, and the demands of the Government, that that was a month before the tie market opened?

A. Perhaps that was justified under the condition.

Q. I am just getting at the facts.

A. Maybe that is true.

Q. If I understand you, you handle a sufficient amount of bagging and ties in your business to cover about 3,000 bales of cotton?

A. Yes, sir.

Q. And it is true, is it not, that there are about six yards of bagging to a bale?

A. Seven.

Q. That would be about 21,000 yards of bagging that you handle a season?

A. Yes, sir.

Q. And that is about one large carload, is it not?

263 A. Of each.

Q. Of what?

A. A carload of bagging and a carload of ties.

Q. I am speaking of bagging alone.

A. Yes, sir.

Q. That is one large carload of bagging a season that you handle?

A. Yes, sir.

Q. Assuming that is 21,000 yards, how many bundles of ties?

A. About the same number—600 bundles.
Q. Is that a full carload of ties—an ordinary carload?
A. I believe that is about 33,000 pounds.
Q. 36,000 pounds, is it not?
A. Yes, sir; and they claim that they should load the cars to the limit on anything.
Q. To help us win the war?
A. Yes, sir.
The EXAMINER. That is good.

By Mr. BIGGS:

Q. It was something less than a carload of ties you
264 handled in 1917, and about a full carload of bagging?
A. Yes, sir.

Mr. BIGGS. That is all.
The EXAMINER. Anything further, gentlemen?
Mr. ROBERTS. Nothing more.
(Witness excused.)

AUGUST WISRODT was called as a witness, and being first duly sworn, testified as follows:

Direct examination by Mr. THOM:

Q. Please state your full name.
A. August Wisrodt, Galveston, Texas.
Q. And your business?
A. I am in the warehouse business, storage business, forwarding business, and wholesale grain business.
Q. In these several business of yours, do you come in contact with the cotton tie or cotton bagging situation?
A. We sometimes store it, yes, sir.

Q. Have you had any experience this present year with
265 regard to endeavoring to get cotton ties from Warren, Jones & Gratz?

A. Well, I had a telegram out of Wills Point, from Mr. W. H. Wingle. I had a telegram from Mr. Wingle, at Wills Point to secure——
Mr. BIGGS. I object.
The EXAMINER. Introduce your telegram.
Mr. THOM. I do not care to introduce the telegram. It is entirely immaterial.
The EXAMINER. Very well.

By Mr. THOM:

Q. Did you receive a request to obtain cotton ties?
A. Yes, sir.
Q. Pursuant to that request, did you endeavor to do so?
A. Yes, sir.
Q. From whom?
A. From the office of Warren, Jones & Gratz, of Galveston.
Q. To whom did you talk?

A. Mr. Adolph Risser, of Galveston.

266 Q. Will you please state, in your own words, what the conversation was?

Mr. Biggs. Give the date of the conversation.

Mr. Mr. Thom:

Q. I asked, in the year 1917. Do you remember approximately the date?

A. It was in 1917. I think it was some time in May.

Q. Have you any memorandum that will refresh your memory as to the date?

A. I have the telegram itself.

Q. Will you look at the telegram? I do not intend to ask you to introduce it, but only to refresh your recollection.

A. It was May 17, 1917.

Q. May 17, 1917?

A. Yes, sir; when I received it, it came from the Western Union——

The Examiner. Do not say anything about the telegram.

By Mr. Thom:

Q. It was the telephone conversation on May 17. That is the question I asked. Will you state what that conversation was?

267 A. Why, I tried to buy 5,000 bundles of ties from Mr. Risser, for Mr. Wingle, and Mr. Risser told me he could not sell me ties without the bagging, and I asked for a price on the bagging and also on the ties, and wired that to Mr. Wingle.

Q. Did he make any other statement in connection with that?

A. Nothing more than he told me there would be no shortage of ties or bagging.

Q. Did Mr. Wingle accept the order?

A. No, sir.

Q. Do you happen to know why?

A. Yes, sir; because I just happened to finish shipping him 500 bales of sugar bag cloth. That takes the place of bagging.

Q. Sugar bag cloth?

A. They seem to like it better in Texas.

Q. Comparatively little demand for American bagging?

A. I do not know what the demand is on that.

Q. You know the demand is large for sugar bagging cloth?

A. Yes, sir; I know that from what I have seen.

268 Mr. Thom. The witness is with you.

Cross-examination by Mr. Biggs:

Q. Sugar bagging cloth is much cheaper than bagging, is it not?

A. I do not know.

Q. You are not in the bagging business?

A. No, sir.

Q. You are not an expert on conditions in this business, or prices?

A. No, sir; on quality or price, or anything else.

Q. You were trying to buy some ties for Mr. Wingle?
A. Yes, sir; for Mr. Wingle.
Q. You had a conversation, you say, with a man by the name of Risser?
A. Yes, sir; in Galveston.
Q. In Galveston?
A. Yes, sir.
Q. You do not know what relation he bears to Warren, Jones & Gratz, do you?
A. He used to be with Mr. Price. When Mr. Price was
969 alive he was Mr. Price's chief clerk, so I presume he is chief clerk in the office of Warren, Jones & Gratz. I do not know what his title is.
Q. You presume he is chief clerk?
A. I know he is the man you have to go to to get prices.
Q. Did you ever try to get prices on bagging and ties before?
A. I do not recollect. I tried in 1916.
Q. Why did you do that—you are not in the business.
A. I have requests from different people. They know I have the stuff on storage. I forwarded, for instance, 500 bales of sugar cloth, to Mr. Wingle, and he asked me to get ties for it.
Q. You do not know whether he got them from some one else afterward or not?
A. Yes, sir; he got them. He picked them up from different places.
Q. In 1917?
A. Yes, sir; he had the bagging. He used sugar bag cloth.
970 Q. You do not know what the price was, or what?
A. No, sir; I might have known, but I have forgotten.
Q. How did you happen to come here as a witness—did you make any complaint?
A. No, sir; I made no complaint to the Federal Trade Commission, nothing more than I had a letter from them asking different questions, to which I replied.
Q. Was that letter you had from them prior to May 17th, or after May 17th?
A. After May 17th—you mean the letter from the Federal Trade Commission?
Q. Yes.
A. That was after May 17th.
Mr. Biggs. That is all.
Mr. Roberts. Come down, Mr. Wisrodt.
(Whereupon, at 12.45 o'clock p. m., a recess was taken until 1.45 o'clock p. m. of the same day.)

971 AFTER RECESS.

The hearing was resumed at 2 o'clock p. m., pursuant to the taking of recess.

W. M. FOSTER was called as a witness and, being first duly sworn by the examiner, testified as follows:

Direct examination by Mr. ROBERTS:

Q. Your full name is W. M. Foster?
A. Yes, sir.
Q. Of Early-Foster, of Waco, Texas?
A. Yes, sir.
Q. What relation do you sustain to that firm, Mr. Foster?
A. Now?
Q. Yes, sir?
A. I am president now.
Q. How long have you been connected with this firm?
A. Ever since it originated, about 14 years ago.
Q. About 14 years ago?
A. Yes, sir.

272 Q. How long has this firm been in the bagging and tie business?

A. About 12 years. It has been handling bagging and ties about the length of time.

Q. About how much do you handle annually of bagging and how much of ties?

A. Why, it is owing to the conditions. We run about a million and a half to two million.

Q. How is that?

A. Including bagging and sugar cloth, we handle about two million a year.

Q. Two million yards of bagging?
A. Yes, sir.
Q. How many ties?
A. Why, the ties to match it. We have some excess in ties.
Q. How many ties?
A. Why the ties to match it. We have some excess in ties. I do not remember. I suppose 15 or 20 thousand in excess of the bagging. We sell in straight cars, as a rule.

Q. How many do you sell in all? That is what I said.

273 How many in all?

A. Of bagging, I would say we handle about a million and a half yards, and we would have to handle ties to match it, if we sold in mixed cars. Sometimes we sell bagging without the ties, just as we sell ties, sometimes, without the bagging.

Q. Yes, sir. Have you ever had dealings with the firm of Warren, Jones & Gratz?

A. Why, some little. Not many dealings.

Q. Where did your firm usually secure bagging and ties?

A. We imported most of the bagging we handled until the war started.

Q. Where from?

A. From Dundee, Scotland, and India.

Q. Where did you get your ties?
A. We bought the ties, up to two years ago, from the Pittsburgh Steel Company and the Atlantic Steel Company, and some from the Sheer Company, at Waco, and a firm at Birmingham.
Q. Connors-Weyman Company?
A. Yes, sir; Connors-Weyman Company; and we bought
274 around promiscuously.
Q. When did you first have difficulty in securing ties, if at any time?
A. Why, we had difficulty last year, in 1916, and this year.
Q. During last season were you able to secure the ties from the Atlanta concern or the Birmingham concern, either one?
A. We did from the Birmingham, but not the Atlanta concern.
Q. During last year?
A. Yes, sir.
Q. Mr. Foster, do you know anything about the proportion of ties that is required for the cotton crop——
A. No, sir——
Q. (Continuing.) Manufactured by the different concerns?
A. No, sir; I never figured it.
Q. Who represents Warren, Jones & Gratz in the distribution of ties and bagging at the city of Waco?
A. The Sheer Company.
Q. The Sheer Company?
275 A. Yes, sir.
Q. Is that the name of the firm?
A. The Sheer Company.
Q. Did you ever make any effort during 1916 or 1917 to buy ties from the Sheer Company?
A. Yes, sir.
Q. When you bought from Warren, Jones & Gratz?
A. I did not buy from them.
Q. To whom did you give the order?
A. I did not buy from Warren, Jones & Gratz.
Q. Well, when the Sheer Company sold——
A. I gave it to the Sheer Company.
Q. You gave it to the Sheer Company?
A. Yes, sir.
Q. Where were the ties shipped from to you?
A. Why, from Galveston—some of them.
Q. Well, who shipped them to you?
A. Why, the Warren, Jones & Gratz agent, Mr. ——, I do not remember his name. Price was the only man who shipped any ties. The other man did not ship any.
Q. What statements, if any, while the Sheer Company represented Warren, Jones & Gratz, did they ever make to you
276 to the effect that they could not sell ties without bagging?
Mr. BIGGS. I think you are leading the witness, Mr. Roberts.
Mr. ROBERTS. I said, "to the effect."

The WITNESS. Why, we always traded with the Sheer Company for bagging and ties every year more or less and got more or less ties from them. This year or last year they simply said they could not sell bagging without ties.

By Mr. ROBERTS:

Q. Could not what?

A. Could not sell bagging without the ties and were unable to supply ties without the bagging.

Q. You mean they could not sell ties without bagging?

A. That is exactly what I said.

Q. At first I did not understand you.

A. Yes, sir.

Q. State whether or not you had already supplied yourself with bagging at that time?

A. Why, we had bought considerable bagging—not all that we needed.

Q. All that you needed?

A. Not all that we needed or all that we had sold.

277 Q. What kind of bagging did you have on hand at that time?

A. We had some Eureka bagging purchased, and sugar cloth to make 12,000 rolls of sugar cloth, and 750 yards of Eureka bagging.

Q. Did you want to buy any bagging at the time you bought the ties?

A. Yes, sir; we wanted some bagging, and bought some.

Q. Well, state whether or not you were able to secure ties without your also purchasing bagging.

A. No, sir; they did not sell any ties without the bagging.

Q. You say they did not. Why not?

A. They did not have it themselves. They could not sell it if they did not have it.

Q. What is that?

A. They could not sell it if they did not have it, and they said they did not have it.

Q. That is the reason they gave you for not selling ties?

A. Yes, sir.

278 Q. Well, was it possible for you to buy ties from them without also buying bagging?

A. Well, we finally bought some ties of them that they got from the Atlanta Steel Company through the Willingham Warehouse at Atlanta, Georgia; in fact, we exchanged some of our ties that we got from the Birmingham concern for some of the ties they got through Willingham themselves.

Q. At the time they made you that proposition, did you decline to buy ties at any time when they made you a proposition at all, that they would sell you bagging, having gotten them elsewhere?

A. I had to get ties elsewhere to match the sugar-cloth bagging I had bought.

Q. Where did you get those ties?

A. We finally got the Carolina Bagging Company to supply the greater portion of the new ties and some spliced ties and whole ties.

Q. How did the prices that you had to pay for them compare with the prices at which Warren, Jones & Gratz were selling them; did they cost more or less?

A. They cost from 15 to—let me see—about 15 to 25 cents a bundle more.

Q. More.

279 A. Yes, sir.

Q. That was in 1916?

A. Yes, sir.

Q. How has it been this season—the fall of 1917?

A. I am speaking of 1917 now.

Q. The transaction you have just detailed was in——

A. 1917.

Q. It was in 1917 instead of 1916?

A. Yes, sir.

Q. Did you have any difficulty in 1916?

A. Our difficulty was not so great. We managed to get through without very much difficulty in 1916.

Q. State whether or not, in 1916, you were compelled to buy bagging in order to get ties at any time.

A. Well, if we used the Ludlow bagging or Warren, Jones & Gratz bagging, unless we had ties, we had to buy the bagging. We had to buy as much bagging as ties to get them, or anybody else from whom we bought them. We did not feel we had to——

Q. You could not get ties unless you did that?

A. We were told that.

280 Q. Who told you that?

A. Let me see—the Ludlow agent at Galveston, and the Sheer Company, for another.

Mr. ROBERTS. You may examine Mr. Foster, Mr. Biggs.

Cross-examination by Mr. BIGGS:

Q. Did you do any business with Warren, Jones & Gratz in 1915, Mr. Foster.

A. We had a transaction that we did not—that was canceled. I had a transaction with Warren, Jones and Gratz that was canceled.

Q. For bagging and ties in 1915?

A. I think it was.

Q. It was canceled by them at your request?

A. Yes, sir.

Q. How much was it, do you know?

A. I think 100,000 yards.

Q. 200,000 yards of bagging and 6,700 bundles of ties, was it not?

A. Yes, sir; ties to match the bagging.

Q. Your contract was canceled for you?

281 A. Yes, sir; at my request, which was agreeable all around. There was no bother about that.

Q. Now, who is the Sheer Company that you talked about, Mr. Foster?

A. They are wholesale jobbers at Waco.

Q. They are not brokers—they are regular dealers?

A. Wholesale Jobber; yes, sir.

Q. They buy and sell and trade in ties?

A. Yes, sir.

Q. And your business has been mostly through them?

A. For Warren, Jones & Gratz. My correspondence has been mainly through them.

Q. Do you want the Commission to understand that you know that the Sheer Company are the agents or anything of that kind for Warren, Jones & Gratz, or simply handle their lines of goods.

A. They simply handle their lines of bagging and ties, as far as I know. I do not know they are any particular agents, except they handle exclusively for them in that territory.

Q. They buy——

A. They buy in that territory.

282 Q. I understand you to say that this concern refused to sell you ties without bagging in 1917?

A. And 1916—American bagging or Texas bagging—without getting the bagging to match.

Q. Have they got a warehouse in your city?

A. No, sir—oh, yes, they have a farehouse.

Q. They have bagging and ties in that warehouse?

A. They have a car shipped in to supply the retail trade with them. Most of their bagging is shipped out from Galveston in carload lots.

Q. Did you take this matter up with Warren, Jones & Gratz direct in 1916 or 1917 and try to secure ties?

A. No, sir.

Q. And the Sheer Company, you say, refused to furnish you with the ties?

A. I said they could not.

Q. They could not?

A. No, sir.

Q. That is the way the business was usually done?

A. How is that?

Q. That is the way the business was usually done? People buy so many ties and so much bagging?

283 A. Unless you have a lot of sugar cloth and want to get the ties to match?

Q. You have a lot of sugar cloth and want to get ties to match?

A. Yes.

Q. You say you did get your ties from the Carolina Bagging Company?

A. Some of them.

Q. In 1917?
A. Yes, sir.
Q. But in 1916——
A. We got some from them in 1916, too.
Q. From whom else did you get them in 1916?
A. I think we bought some—I do not know from how many different people—but some from P. P. Williams and Company in 1916?
Q. In 1916?
A. Yes, sir; I think it was 1916.
Q. Some ties?
A. Yes, sir.
Q. Did you buy any from P. P. Williams & Company in 1917?
284 A. No, sir.
Q. Did you try to?
A. Yes, sir.
Q. Did you try, in 1916, or 1917, to buy any ties from the Pittsburgh Steel Company?
A. Yes, sir.
Q. And failed to get them?
A. Yes, sir; they put me on the list, but when the market opened they said they had sold them all out and I could not get any.
Q. Was that 1916 or 1917?
A. That was 1916. In 1917——
Q. Did you try to buy any from the Atlantic Steel Company in either 1916 or 1917?
A. Yes, sir.
Q. Did you get any?
A. I think we got from the Atlantic Steel Company, maybe 3,000 bundles, but I am not sure, in 1916.
Q. Did you get any from Connors-Weyman & Company in Birmingham, in 1916?
A. Yes, sir.
Q. You got some from them?
285 A. Yes, sir.
Q. And in 1917?
A. Yes, sir.
Q. Did you also get some from the Atlantic Steel Company in 1917?
A. No, sir.
Q. Now, in 1916, and 1917, what bagging was it that you had—did you buy any American bagging?
A. Yes, sir.
Q. 1916 and 1917?
A. Yes, sir.
Q. What other brands did you have?
A. We have handled the Eureka brand, the Carolina Bagging Company—yes, and we had some Dundee bagging they had bought

from other people, and sugar cloth, and some American bagging or Texas, rather, bagging. Be sure to make Mr. Grages tell all he knows, too.

Q. You don't mean to say that nobody else sells ties and bagging for Warren, Jones & Gratz—ties for Warren, Jones & Gratz in your district, but the Sheer Company, do you?

A. I do not know of any.

286 Q. Don't you know that Warren, Jones & Gratz sell in the territory?

A. I say I do not know. They may. I do not know of anyone else selling for them.

Q. In 1915, you had a contract direct with Warren, Jones & Gratz, did you not?

A. Yes, sir.

Q. The Sheer Company, at that time, was selling their stuff?

A. Yes. Now, in explantion of that, we were not buying from Warren, Jones & Gratz, and have not tried to buy from Warren, Jones & Gratz direct for the reason we have a working arrangement with the Sheer Company, of that territory, and something came up on a trade that we were disagreeing on, and we felt we could buy from Warren, Jones & Gratz, if they could buy other goods we were handling, and when we found they had not made the contract we thought they had, we suggested we had made a contract with Warren, Jones & Gratz, and if they wanted us to we would cancel it, with the permission of Warren, Jones & Gratz. We explained to Warren, Jones & Gratz the whole situation, and as nice a firm as they are, they said, "All right."

287 Q. That is the reason you did not go to Warren, Jones & Grazt, because of the working agreement you had with the Sheer Company?

A. Yes, sir.

Q. You got all the ties you wanted in 1916?

A. I do not remember.

Q. I mean a sufficient number of ties for your business, to go with the sugar bagging, and so forth?

A. Yes, sir; spliced ties and whole ties.

Q. Did you sell them all out?

A. Yes, sir; to Mr. Graves.

Q. Did you sell to anybody else than Mr. Graves?

A. We shipped them to him.

Q. Did you sell them all out in a lot at the end of 1916?

A. I do not believe it was 1916. It was 1915, I think. I do not remember now, whether we sold out our ties in 1915, or not.

Q. You sold out in a regular trade and took all the ties you bought in 1916?

A. Yes, sir.

288 Q. Now, of course, as to 1917, you are not through, as far as you are concerned, this season?

A. We are short on ties now, but we do not want to pay the price asked.

Q. When was it you sold these ties to Mr. Graves?

A. I sold them to a broker in Dallas. I understood Mr. Graves got them.

Q. When was that?

A. I think that was at the end of 1915.

Q. 1916?

A. Yes, sir; I do not think it was 1916. I do not remember.

Q. The year 1915, you had more ties than your business needed?

A. Yes, sir; we had imported some ties.

Q. To meet your regular trade; and those ties you sold out in the lot at the end of 1915?

A. I think that is right.

Q. What transaction did you have with P. P. Williams & Company—was that 1916, or 1917?

A. We did not have any transaction in 1917. I said a transaction in——

Q. 1916?

289 A. I think it was the years 1915 and 1916.

Q. Did you buy some ties from P. P. Williams & Company in 1916?

A. I think it was. I am not sure.

Q. How much was it?

A. I don't know.

Q. Did you buy any bagging from them?

A. I think not.

Q. At any time did they ask you to buy bagging at the time you got ties?

A. No, sir; they never required it. I never asked them for that.

Q. In the year 1916 you did buy ties from P. P. Williams & Company without taking bagging?

A. I think it was.

Q. And one in 1917?

A. No, sir; none.

Q. Did you try to buy them without bagging?

A. Yes, sir; they said they had none to offer. That is all they wrote me.

Q. Did they make any condition attached to it, or simply say they did not have any ties?

290 A. They did not have any ties—that is it.

Q. Mr. Foster, you have testified that these ties you bought, I think, from the Carolina Bagging Company in 1915, that you had to pay from 15 to 25 cents a bundle more——

A. I said that was the range of price we had to pay for all ties we bought to match bagging, outside of what we had——

Q. Is that 15 to 25 cents more than the opening price of ties?

A. Yes, sir.

Q. When was it you bought these ties—you bought them later in the season, did you not?

A. No, sir; a few days after the opening of prices.

Q. This was in 1917?

A. Yes, sir; as soon as we could buy them.

Q. All ties had advanced in the meantime, had they not?

A. No, sir; you could buy ties cheaper to-day than you could then—from dealers.

Q. Is it not true, though, that ties advanced between the time the market opened and the time you bought—don't they usually
291 advance shortly after the market opens—is not that true?

A. Well, they usually advance. There was a time when they used to advance—the bagging and ties both, about three cents, but I do not recall that the ties have advanced immediately after the market opens.

Q. You do not remember?

A. No; I do not recall that. You see, there is no way of telling that the prices on bagging and ties to match are reasonable.

Q. This business is handled together; that is, the ties are sold with the bagging?

A. Yes, sir.

Q. That is the way the business is handled?

A. As a rule.

Q. Do you know of any dealer who handles ties exclusively, and not bagging?

A. No, sir. A dealer?

Q. Yes.

A. No, sir.

Q. Do you know of any dealer who handles bagging exclusively without handling ties to match?

292 No, sir; well, they would only be like this: We imported a lot of bagging and would have to buy ties to match. We sold a lot of bagging without ties.

Q. I asked you if you knew any dealer that sold bagging in the business without handling ties.

A. No, sir; he could not do that; that is, if he sold to a ginner or a little man, he would have to furnish both, unless they could buy their ties elsewhere.

Q. I understood you to say that the agent for the Ludlow manufacturing associates at Galveston refused to furnish ties unless you bought bagging.

A. Yes, sir.

Q. What year was that?

A. That was 1916.

Q. 1917, too?

A. No, sir; I did not ask in 1917. They said I handle Warren, Jones & Gratz goods, and they could not sell me. I could not handle both lines.

Mr. ROBERTS. I do not believe that is admissible, your honor. There is no complaint against Ludlow. I do not think it justifies these people if Ludlow did do that. I move to strike it out and object to it.

Mr. BIGGS. It is in answer to one of the questions you asked him.

293 Mr. ROBERTS. I object to it, no matter where it comes from.

The EXAMINER. Note the objection on the record.

Mr. ROBERTS. I object to it on the ground it does not apply and is immaterial.

By Mr. BIGGS:

Q. Did you make any complaint, Mr. Foster, to the Federal Trade Commission?

A. No, sir.

Q. Did you try to buy any ties in 1916 or 1917 from the Sharon Steel Company?

A. Is that the only name it goes by? I do not remember. We tried to buy from everybody we knew that manufactured them.

Q. You do not remember that concern?

A. No, sir; I have no recollection of that.

Q. Do you know that concern?

A. I know of it.

Q. You do not mean to say that you tried to buy from them?

A. No, sir; we tried to buy from everyone that manufactured them.

294 Q. You say you handled 15,000 or 20,000 bundles of ties outside of the amount required to go with your regular trade, with the bagging, and so forth?

A. We usually do that.

Q. Did you do that in 1916?

A. No, sir; I do not think we got by with all that in 1916. I think 1915—in 1915 we just about worked out even.

Q. And in 1915 you did. How about this year?

A. We have not gotten by yet. I think we are going to get by even.

Q. You think you will be even at the end of the year?

A. Yes, sir; we are some ties ahead. Of course if we sell bagging, we will sell ties.

Mr. BIGGS. That is all.

Redirect examination by Mr. ROBERTS:

Q. Mr. Foster, Mr. Biggs asked you if dealers don't usually sell bagging and ties together.

A. Yes, sir.

295 Q. I want to ask you if dealers usually refuse to sell ties without bagging?

A. They would not refuse to sell ties without bagging, if they had both.

Q. You are a dealer in bagging and ties?

A. Yes, sir.

Q. Do you refuse to sell people one without the other?

A. If I have them I do not.

Q. You stated awhile ago about the Sheer Company. Have you ever been able to buy Warren, Jones & Gratz ties manufactured by the Carnegie Steel Company or the American bagging, from anyone else in your territory except from the Sheer Company?

A. I never have bought them in our territory except from them. I never tried anyone else in our territory except them.

Q. Do you know anyone in Waco, or in that territory, that handles their bagging and ties except the Sheer Company—I mean to sell them to jobbers?

A. The jobbers there do. I do not know anyone else but them.

Q. Are you not acquainted with the trade?

296 A. Yes, sir; I say I do not know of anyone else except the Sheer Company.

Q. You mean the bagging and ties of Warren, Jones & Gratz?

A. Yes, sir.

Q. You do not know whether the Sheer Company handles the goods on a commission, or how they handle them, except they have the exclusive handling of them—is that true?

A. I know they handle them. I know they push both bagging and ties, but I do not know what terms or arrangements they have with Warren, Jones & Gratz.

Q. So, you do not know how else you might be able to get their bagging and ties without your getting them through the Sheer Company—is that true?

A. I think Warren, Jones & Gratz would sell us. I think they would.

Q. You think they would?

A. Yes, sir.

Q. But still, when you buy from them, you have been buying from the Sheer Company?

A. Yes, sir; I have an arrangement with the Sheer Company.

297 We have been handling their goods through the Sheer Company. We have that much respect for that firm, as one firm to another.

Q. When you would give an order to the Sheer Company would the goods it delivered be the goods of the Sheer Company or be shipped by Warren, Jones & Gratz?

A. They would be shipped by Warren, Jones & Gratz, and delivered invoiced to the Sheer Company.

Q. The railroad would deliver them to you from Galveston?

A. Yes, sir.

Recross-examination by Mr. DIGGS:

Q. Warren, Jones & Gratz never refused to sell you bagging and ties?

A. No, sir; I never applied but one time, and that was in 1915.

Q. When you succeeded in making a contract, direct with them, for the bagging and ties that you wanted?

A. Yes, sir.

Q. Since then you have made no application to them for bagging and ties?

298 A. No, sir.

Mr. ROBERTS. Is that contract——

Mr. BIGGS. Just a moment.

Mr. ROBERTS. Excuse me, I thought you had finished.

By Mr. BIGGS:

Q. Is not this true, Mr. Foster, that in Texas a large percentage of the bagging and ties are sold by jobbers in mixed carload lots; that is, part bagging and part ties?

A. A large portion is sold that way; yes, sir.

Q. Therefore, is it not true that a dealer would not want to sell one without the other?

A. I do not know whether they would sell or not, but it would be more convenient to sell them together.

Q. That is the way they want to do business—want to have the ties and bagging and ship them in mixed carload lots?

A. Yes; one without the other is no good.

Redirect examination by Mr. ROBERTS:

299 Q. You do not mean by that that you necessarily sell a corresponding amount of bagging to go with a given number of ties?

A. It is only necessary if a man does not have bagging and ties. If he does not get ties and buys bagging, it would be useless. But if he bought a car of bagging, he could buy a carload of ties from some one else if he wanted to.

Q. Is not this true, that a great many people in Texas handle sugar-bag cloth?

A. Yes, sir.

Q. That is very generally handled?

A. Yes, sir.

Q. And all those who wanted to buy ties to go with it are not buying bagging?

A. Yes, sir; frequently that is the case. You have to buy ties to match sugar cloth.

Q. If you had a customer of that kind who wanted to buy ties, you would not want to sell him bagging?

A. That is that?

Q. If you had a customer already supplied with sugar-bag cloth or the regular bagging, you would not expect to sell bagging; you could only expect to sell the ties?

300 A. Oh, yes, sir; that is right; only expect to sell the ties.

Q. My brother over here asked a while ago as to a contract made direct with Warren, Jones & Gratz in 1915. State whether or not that is the contract that was subsequently cancelled.

A. Yes, sir.

Q. So, then, as a matter of fact, you never did buy from them direct, but canceled the only contract you ever made with them; is not that true?

A. I think that is a fact.

Mr. ROBERTS. I think you can come down.

The EXAMINER. Call the next witness.

Mr. BIGGS. May I recall Mr. Foster and ask another question, please?

The EXAMINER. Very well.

By Mr. BIGGS:

Q. Mr. Foster, this sugar-bag cloth that you testified about—who handles that principally? Where do you get that from?

A. That comes from the American Sugar Refineries and from Arbuckle.

301 Q. Young and Metzner?

A. That is the same as American bagging.

Q. They also sell ties?

A. I do not know.

Q. Did you ever try to buy ties from Young & Metzner?

A. No, sir.

Q. You don't know that they do not sell ties, as a matter of fact?

A. They have never quoted me.

Q. Did you ever ask them to quote ties?

A. I do not believe I ever recall asking them to quote ties. They have an agent there at Dallas. It came up like this: He wanted to sell me 200 bales of sugar cloth and I told him I did not have the ties to go with it. He said he might be able to buy some for me. That is as far as I know.

Q. That is as far as you know?

A. Yes, sir; I asked him to try to, but he did not offer me any.

Q. Do you know Mente & Company, of New Orleans?

A. Yes, sir.

Q. They handle sugar cloth, do they not?

302 A. Yes, sir.

Q. Don't they also handle ties with the sugar cloth?

A. I could not testify to that now, because I have not tried them and do not remember seeing any quotations from them.

Mr. BIGGS. That is all.

Mr. ROBERTS. That is all.

(Witness excused.)

303 M. M. GRAVES was called as a witness, and, being first duly sworn, testified as follows:

The EXAMINER. Mr. Graves, I will ask you to speak just as distinctly and as loudly as you can, on account of the noise. I think we will hear you much better if you will do that.

Mr. GRAVES. All right.

Direct examination by Mr. ROBERTS:

Q. Please give us your name.

A. M. M. Graves.

Q. What is the style of your firm?

A. M. M. Graves Company.

Q. Where are you located?

A. Houston, Texas.

Q. What kind of business do you do?

A. Bagging and ties, and cotton seed products business.

Q. How long have you been in business in Houston?

304 A. The firm of M. M. Graves, from January 1, 1913; prior to that, from 1896, I was with the firm of Street & Graves, which was in the same business.

Q. What size business do you do—what is the annual volume of your business in bagging and ties?

A. We average about 5,000,000 yards of bagging and upwards.

Q. You average 5,000,000 yards of bagging and upwards?

A. And upwards.

Q. How many bundles of ties?

A. It will average about 150,000 to 200,000 bundles.

Q. What brands of bagging have you been using during the years 1916 and 1917?

A. Texas and American brands of regular bagging and sugar bag cloth.

Q. Do you know where this sugar bag cloth comes from—from where it is imported into this country?

A. The bulk of ours comes from Young & Metzner, from Long Island City, New York. We have bought some from the sugar refiners up there.

Q. Is it a fact that it comes from Cuba?

A. It originates there.

305 Q. And they ship unrefined sugar in them?

A. It originates in Cuba, but when it leaves Cuba it is in the form of sugar bags, in which they ship sugar. After it is emptied at the refinery they use it for cotton covers.

Q. State how it compares with the American bagging for covering cotton—which is preferable?

A. That is largely a matter of vicinity; some of the customers prefer sugar bagging and some prefer the American bagging.

Q. Which is the most popular in Texas in the vicinity where your trade is?

A. Well, we sell a little more of the American in Texas than we do of the sugar.

Q. Than the sugar bagging?

A. Yes, sir; our sales of those two brands combined are what we term regular bagging. The sales of the American bagging are a little larger than they are of the sugar.

Q. Did you at any time ever undertake to buy from Warren, Jones & Gratz any ties to match your sugar cloth that you had on hand?

306 A. Yes, sir.

Q. When was that?

A. Why, along about April of 1917, and then again when the market opened in May, 1917.

Q. How much did you undertake to buy from Warren, Jones & Gratz?

A. 25,000 bundles.

Q. Did you need that much to go with the amount of the sugar bagging cloth that you had on hand?

A. We needed approximately that many in order to match the sugar bagging cloth that we had already purchased, and then along during the course of the season we would naturally buy more sugar bagging cloth for which ties would be required.

Q. Which one of the offices of Warren, Jones & Gratz did you have these negotiations with?

A. In April we had negotiations with them by wire.

Q. At St. Louis?

A. At St. Louis; and in May I was in Dallas the morning the market opened, and I had a conversation over the long distance phone with Mr. Brown, and also with Mr. Murray, of Warren, Jones and Gratz, who was then in Dallas.

307 Q. With what firm was Mr. Brown connected?

A. Warren, Jones & Gratz.

Q. What capacity?

A. He seemed to be a selling agent, I do not know what his capacity is, officially.

Q. Is that the gentleman who is present at this hearing?

A. Yes, sir.

Q. What relation does Mr. Murray sustain to the Warren, Jones & Gratz concern?

A. I think his title is selling agent.

Q. What success did you have in purchasing these ties, if any?

A. I did not have any.

Q. You could not get them?

A. No, sir.

Q. That was in June, 1917?

A. May, 1917.

Q. What did Mr. Murray and Mr. Brown tell you—what reason did they give you for not selling you the ties?

A. Did not have them to spare.

Q. What?

308 A. Did not have them to spare.

Q. Did not have them to spare?

A. No, sir.

Q. What did they say about supplying you with ties, if you also bought a corresponding amount of bagging?

A. They said that they would supply us with ties to match the bagging we purchased from them.

Mr. BIGGS. He asked what they stated.

By Mr. ROBERTS:

Q. At that time in May, in Dallas, what did they say then about letting you have ties, if you also bought bagging?

A. They agreed to let us have ties to match the bagging, and did do so.

Q. Did you at that time, buy the 25,000 bundles you wanted, and the bagging to correspond.

A. Not the 25,000 bundles we wanted without the bagging. We did buy ties with bagging. Those were two separate propositions.

Q. Two separate propositions?

A. Yes, sir.

109 Q. What did the ties cost you delivered at Houston that you bought of Warren, Jones & Gratz with the bagging—do you remember?

A. Well, we bought those f. o. b. Galveston. I think the price was $2.29, less the jobbers' discount.

Q. $2.29?

A. Yes, sir; less the jobbers' discount.

Q. You being the jobber, you got the discount?

A. Yes, sir.

Q. How much discount did you get—do you remember?

A. Four or five cents a bundle—something like that.

Q. Where, then, did you secure the ties to go with the sugar bag cloth that you had on hand?

A. That was obtained through Young & Metzner.

Q. Where are they located?

A. Long Island City, New York.

Q. You got ties from them?

A. That is, we purchased from them but the ties were shipped by the Carnegie Steel Company.

Q. How large a lot was that—how many did you buy from Young & Metzner?

A. Between 35,000 and 40,000 bundles.

110 Q. About when did that transaction take place, that you were able to secure them through Young & Metzner?

A. Immediately after our order was refused by Warren, Jones and Gratz, along about the 16th of May—the 16th or 17th of May.

Q. Along about the 16th of May——

A. Yes, sir; the 16th or 17th of May.

Q. Did you ever have any further negotiations with Warren, Jones & Gratz, directly, about ties at that time?

A. A few days after that they offered us some ties, I think for August, September, and October delivery, or September, October, and November delivery—something like that.

Q. A few days after the time they refused to sell you at Dallas?

A. Yes, sir; three or four days later.
Q. F. o. b. Pittsburgh?
A. Three or four days later.
Mr. Biggs. That was for July and August?
A. For August, September, and October, I think. It may have been September, October, and November. They were to be shipped several months later, I know.

311 By Mr. Roberts:

Q. Did they at that time say anything about requiring you also to buy bagging?
A. Not in connection with those ties they offered for deferred delivery.
Q. For deferred deliveries?
A. Yes, sir.
Q. They did not say anything about bagging?
A. No, sir.
Q. About what time in May do you think it was you had the conversation in Dallas with Mr. Murray and Mr. Brown?
A. It was on Monday morning, I think it was about the 16th of May. It was Monday morning, and possibly about that date.
Q. You think about 4 days later Warren, Jones & Gratz offered to sell you these ties for deferred delivery; and did not require you to buy any bagging?
A. Yes, sir.
Q. In the meantime, though, you had bought ties from Young and Metzner?

A. Yes, sir.
312 Q. And did not need the others?
A. I did not need them any more.
Q. Well, give the date, just as nearly as you can, that you bought those from Young & Metzner?
A. I think we bought them on Tuesday or Wednesday—probably on Tuesday—but it was just immediately after the market opened. I think it was the day following the failure to get them from Warren, Jones & Gratz.
Q. Did Warren, Jones & Gratz make any explanation to you about why they were offering them to you—say anything about it?
A. I think they did, on account of the steel situation. I think they wrote me something to that effect.
Q. I mean at the time they offered to sell you ties without the bagging later, after you had talked with their agents at Dallas—did they at that time make any explanation of why they were able to sell them to you without bagging?
A. Yes, sir.
Q. Have you a letter there on that subject?
A. Yes, sir.

Q. Let me see it, please.
313 (Witness thereupon handed a letter to Mr. Roberts.)

Mr. BIGGS. I think this letter explains the whole situation. Are you going to introduce it?

Mr. ROBERTS. If you care to introduce it, that will be all right, but I do not think it is responsive to what I have been talking about.

Mr. BIGGS. I think it is, and I think the defendants should have the right to have the letter go in. Mr. Roberts asked the witness about it, and he has read the letter. This [exhibiting] is the letter the witness referred to and it seems to me it should be introduced; in other words he asked this witness a question and asked him to state or give any explanation as to why they offered that 25,000 bundles of ties, and here is the letter he produces in explanation of that. He has produced it, and I think you should put it in the record.

The EXAMINER. I do not think he introduced the letter, but he has spoken of the letter, and produced the letter in explanation of the question asked him. He can take the letter and refresh his memory from it.

Mr. ROBERTS. In reply to my question, he gave me the letter,
313½ and the letter does not contain any explanation, and for that reason I do not care to introduce it. My brother has as much right to introduce testimony as I have, and if he thinks it is worth anything to him—I think it is not worth anything to me—he has a right to introduce it.

The EXAMINER. Suppose when you cross-examine him, Mr. Biggs, you bring up that letter.

Mr. BIGGS. What was the question?

Mr. ROBERTS. There is no question pending. Read what last occurred.

(The stenographer read the last question and answer.)

Cross-examination by Mr. BIGGS:

Q. These 25,000 bundles of ties that you say Warren, Jones & Gratz offered to sell you on May 19th—you did not take those ties, did you?

A. No, sir.

Q. You had previously bought ties on May 17th, from Young & Metzner?

A. Yes, sir.

314 Q. If they had been willing to sell you those 25,000 bundles of ties for immediate shipment, would that have made any difference to you about taking them?

A. Not at that time. So far as I can tell now, I do not think it would have. Possibly we would have taken them at that time; in fact I believe we would have taken them in the light of the information then before us; now, we would not.

Q. Then you would have taken them?

A. I think we would.

Q. How many ties did you carry over from 1916 to 1917, if you know?

A. 1916 to 1917?
Q. Yes, sir.
A. 114,000 bundles.
Q. You carried over from 1916 to 1917 114,000 bundles of ties?
A. Yes, sir.
Q. When had you purchased those ties in 1916, Mr. Graves, if you did buy them in 1916?
A. Well, we had purchased 92,000 of them of Warren, Jones & Gratz. I am giving you these in round figures.

315 Q. That is all right. And the balance of them, where did you get them?

A. From the previous year we had brought forward 158,000 bundles in round figures.
Q. From 1915 to 1916?
A. From 1915 to 1916, and during that year we purchased 134,000, making a total receipt for the year of 292,000 bundles of ties.
Q. You sold all of these during 1916, except 114,000 bundles?
A. Yes, sir.
Q. And carried over 114,000?
A. Yes, sir.
Q. How much bagging did you carry over from 1916 to 1917?
A. I have not got that down here; approximately, I would say, about 2,000,000 yards.
Q. Approximately 2,000,000 yards?
A. Yes, sir.
Q. And you carried that over to 1917?
A. Yes, sir; taking it from my memory.

Q. That is all we want, your best recollection about

316 it. In November of 1916, is it not true that you bought bagging and ties from Warren, Jones & Gratz?

A. 1916?
Q. Yes.
A. Yes, sir.
Q. In November?
A. Yes, sir.
Q. Do you remember how much bagging you bought at that time and how many ties?
A. A million yards of bagging and about 45,000 bundles of ties.
Q. A million yards of bagging and 45,000 bundles of ties?
A. 45,000 to 47,000 bundles of ties.
Q. Is that more ties than is ordinarily required to match a million yards of bagging?
A. That is about 10,000 or 12,000 more bundles of ties than was required.
Q. 10,000 or 12,000 bundles of ties more than was required to match the bagging you had?
A. Yes, sir.

Q. Of those ties, did you sell any prior to the time

316½ the market opened in 1917?

A. I do not recollect how many we sold, but we had 75,000 bundles unsold at the time the marker opened. We must have sold about 50,000 or 60,000 bundles of ties before the market opened.

Q. You sold 50,000 or 60,000 bundles before the market opened?

A. Probably not that many—probably 40,000 bundles.

Q. Can you give us the average price for which you sold those 40,000 bundles of ties, which you sold before the market opened?

A. I expect probably close to $2.65—between $2.65 and $2.75 per bundle.

Mr. ROBERTS. When was that?

A. Before the market opened in the spring of 1917.

Mr. ROBERTS. I just wanted to understand that.

By Mr. BIGGS:

Q. What was the opening price of 1917, of Warren, Jones & Gratz, for ties?

A. $2.29 Galveston, less the jobber's discount.

Q. What was the advance in ties, Mr. Graves, in price,
817 between 1916 and 1917?

A. About 90 cents a bundle.

Q. So you made, perhaps, $100,000.00 on the ties that you had carried over from the previous year?

A. I don't think we made that much. We had some expenses, you know.

Q. I am speaking of gross. There are some expenses, of course, in carrying over, but if they were advanced 90 cents a bundle and you had 114,000 bundles——

A. We only sold, I told you, about 40,000 bundles.

Q. When Warren, Jones & Gratz came into the market, delivering ties at $2.29, of course you could not sell any more at $2.65 or $2.75?

A. You are wrong in your figures. It was about $35,000 instead of $100,000.

Q. Because you only sold about 40,000 bundles before the market opened?

A. Yes, sir; and those are gross profits.

Q. Of course, when Warren, Jones & Gratz came into the market with bagging and ties and sold ties at $2.29 you could no longer sell ties at $2.65 or $2.75?

A. No, sir.

818 Q. In other words, you had to meet their price?

A. Yes, sir.

Q. But, on the balance, over the 40,000 that you had sold prior to the opening of the market—you did sell the rest of those, however, at a profit of about 40 cents a bundle—40 cents a bundle instead of 90 cents a bundle?

A. We sold them at a profit. I do not just recollect just what.

Q. If you sold them for $2.29 and purchased them for $1.75, you made a profit of 54 cents a bundle?

A. Yes, sir.

Q. Now, as I understand you to say, the only time Warren, Jones & Gratz failed to sell you ties was at the very beginning day of the market, May 16th, when you were at Dallas?

A. For about three days thereafter, to the 19th.

Q. You did ask them every day?

A. We telegraphed them in the meantime and sent them an order for 25,000 bundles, which they turned down.

Q. That was the only occasion, May 16th, at Dallas, talking to Mr. Murray and to Mr. Brown?

319 A. And on Wednesday, I think it was, we telegraphed an order for 25,000 bundles, which they turned down.

Q. And the reason they assigned you was that they did not have the ties?

A. Yes, sir.

Q. But they came back on May 19th and offered you 25,000 bundles?

A. That was by a letter which reached us two or three days later.

Q. And offered you 25,000 bundles for a shipment in August and September or September and October?

A. For fall shipment—for shipment from the mill during October and November.

Q. For shipment from the mill during October and November?

A. Yes, sir; that would be about November and December in Texas after the season is over.

Q. In the previous effort you had made to buy 25,000 burdles, what shipment did you require on that—immediate shipment or what?

A. Shipment subject to call.

Q. As you needed them?

A. Yes, sir.

320 Q. And they said that they were not able to furnish them to you in that way?

A. Yes, sir.

Q. Was anything said at that conversation between Mr. Murray and you and Mr. Brown about selling you some ties and bagging at the same time?

A. They were willing to sell ties to match the bagging, and did do so.

Q. And that is the way the business is usually done, is it not, among dealers and jobbers in your territory?

A. To the final customer, I should say it is, but with large dealers, like ourselves, we frequently buy one without the other, and have done so, even from Warren, Jones & Gratz.

Q. If you can buy extra ties, and it is a good business proposition to buy them, and they are likely to go up, you would buy them?

A. We are not guided by the same policy in buying as we are in selling. Most of the sales to the smaller trade, we have to sell to match. We do not buy that way generally.

221 Q. In the usual buying and selling to dealers in Texas, is it not true that most of that business is done in carload lots, the bagging and ties going together?

A. It is a carload trade; yes, sir.

Q. In other words, a man ordering bagging and ties, will want so many ties, and so much bagging to match them.

A. Yes, sir.

Q. Is not that true?

A. Yes, sir.

Q. What is that proportion of bagging and ties?

A. With regular bagging it is two bundles of ties to each roll of bagging.

Q. Two bundles of ties to each roll of bagging?

A. Yes, sir; with the sugar bagging cloth it is 10 bundles of ties to each bale of bagging.

Q. In 1916, and also in 1917, why, Young and Metzner, who handled the sugar bag cloth, also had ties to sell, did they not?

A. 1917 was the only time I bought bagging and ties from Young & Metzner.

Q. Did you try to buy any in 1916?

A. I think I did, later on in the season.

222 Q. They do handle them?

A. So far as I know this is the only instance in which they handled them. I could not state positively they do not.

Q. Do you know whether the Ludlow Manufacturing Association in Boston sell ties?

A. It is my understanding they do, or did.

Q. They do?

A. Yes, sir.

Q. Do you know whether or not the Pittsburgh Steel Company manufactures and sells ties?

A. They refused to sell us any in 1917. They sold us ties in former years.

Q. How about the Atlantic Steel Company, in Atlanta, Georgia?

A. They refused to sell us any in 1917, but have sold us before that.

Q. Do you know the concern Connors-Weyman Company, of Birmingham?

A. Yes, sir.

Q. How about them—are they manufacturers of ties?

A. Yes, sir.

23 Q. Do they sell them in Texas?

A. Yes, sir; they offered us 10,000 bundles of ties about 25 cents over the Warren, Jones & Gratz prices.

Q. Do you know the concern, the Sharon Steel Company?

A. Yes, sir.

Q. Do they manufacture ties?

A. I think they have gone out of the business. They have not offered us any for a number of years.

Q. Is it not true that Warren, Jones & Gratz, when they offered you these ties—25,000 bundles, on May 19, 1917—they wrote you a letter, didn't they, at that time, making the offer?

A. May 19th?

Q. Did you inform them before that you had gotten some ties from Young & Metzner?

A. I think not.

Q. You got all the ties you needed for your business in 1916, didn't you, Mr. Graves?

A. Yes, sir; including what we carried over.

Q. Including what you carried over?

A. Yes, sir.

324 Q. Including what you carried over to 1917, and so far as you can tell now, you have gotten all the ties you require for your business this year?

A. Yes, sir.

Q. Do you know the concern of Monte & Company, of New Orleans?

A. Yes, sir.

Q. Do they handle the sugar bad cloth?

A. Yes, sir.

Q. Do they handle ties with it?

A. Yes, sir.

Q. Did you ever do business with them?

A. We have done business with them, but have not done business with them for the part two or three years.

Q. You know they are in the business of selling sugar bag cloth with ties?

A. Yes, sir.

Mr. BIGGS. That is all.

Redirect examination by Mr. ROBERTS:

325 Q. There was something said about a transaction in September, 1916. I will ask you whether or not——

Mr. BIGGS. It was in November.

Mr. ROBERTS. Well, one transaction he testified about was in September, 1916.

The WITNESS. I think you are mistaken about that. It was in the testimony of the witness who went ahead of me.

Mr. ROBERTS. Mr. Thom was under the impression that you had testified to that.

The WITNESS. I testified about November, 1916.

By Mr. ROBERTS:

Q. Well, you testified a while ago, about those people, Warren, Jones & Gratz—I believe a letter was introduced—wherein they offered to sell you some ties for October and November delivery?

A. October and November shipment from the mill. That would mean about November and December at Houston.

Q. It takes about 30 days for you to get them after shipment?

A. They had until the end of the month to ship them. If they shipped them at the first of the month we would get them dur-
326 ing the month, generally, but if they shipped them at the end of the month, we would receive them in the next month, some-time.

Q. How long does it take to get them, usually, from Pittsburgh?

A. Generally about ten days, although we had one car that took two months in transit, which shows the uncertainty of the proposi-tion.

Q. Why did you not want them for October and November de-livery?

A. Because it was after the cotton season.

Q. When is the end of the cotton season usually in your part of the country?

A. About the end of October.

Q. About the end of October?

A. Yes, sir.

Q. So that you do not have much trade on bagging, or ties either, after October?

A. No, sir.

Q. When do you begin marketing cotton in the vicinity of Hous-ton, Texas?

A. In August.

Q. When is the larger portion of the crop marketed?

327 A. September and October.

Q. Very little after that—is that true?

A. There is very little ginned after October. Some is held and marketed later, during the year.

Q. Is it true that the demand ceases, practically, for bagging and ties after October?

A. Yes, sir; practically so.

Mr. ROBERTS. That is all.

Recross-examination by Mr. BIGGS:

Q. That varies, does it not, Mr. Graves, with the crop?

A. If there is a late crop, there is some little demand through December and January—scattering lots; just a nominal demand.

Q. What ties are delivered to you from Warren, Jones & Gratz—where do they come from—where are they shipped from?

A. Some from the mills in Youngstown, Ohio, and some from Gal-veston.

Q. Galveston?

A. Yes, sir.

328 Q. It is your experience, is it not——

Mr. ROBERTS. I wanted to ask about this Warren, Jones & Gratz business. It is a question I neglected to ask a while ago.

By Mr. ROBERTS:

Q. Mr. Graves, do you know who has the exclusive handling of the output of the Carnegie Steel Company in the cotton-tie business in the South?

A. Apparently Warren, Jones & Gratz.

Mr. BIGGS. I move that be stricken out. The word "apparently"——

The WITNESS. I would say, whenever we make any inquiries of the Carnegie people, they refer us to Warren, Jones & Gratz.

By Mr. ROBERTS:

Q. If you undertook to deal with the Carnegie Steel Company direct at Pittsburgh, they referred you to Warren, Jones & Gratz?

A. Yes, sir; we have never been able to buy any from them direct.

Q. Do you know what proportion of the ties required for the southern cotton crop is manufactured by the Carnegie
329 Steel Company?

A. I do not know positively. I just have an imagination about it. I do not know whether you want that.

Q. You can give your best estimate.

Mr. BIGGS. I object to his imagination.

Mr. ROBERTS. I did not ask for his imagination. I asked for his estimate—his best estimate.

The EXAMINER. What is the question?

Mr. ROBERTS. I asked if he knows what proportion of the cotton ties necessary for the southern cotton crop is manufactured by the Carnegie Steel Company.

The WITNESS. All I could state would be my best knowledge and belief; I could not state it as a fact.

The EXAMINER. You are asking him for an estimate?

Mr. ROBERTS. Please read the question.

(The stenographer read the question as follows:)

"Do you know what proportion of the ties required for the southern cotton crop is manufactured by the Carnegie Steel Company?"

The EXAMINER. Well, I can let him answer and give his estimate, and let it go in for what it is worth. Let him state what
330 information and knowledge he has upon which he bases his opinion. I do not suppose ordinarily that would be permissible, but in a proceeding like this you can note your objection to it, Mr. Biggs.

Mr. BIGGS. That is not a matter, your honor, that could be known in a definite way. He says he has an imagination about it, and thinks he knows something about it, but he does not know definitely. It is not competent testimony in my judgment.

The EXAMINER. He can state his source of information and let it go in for what it is worth.

The WITNESS. My estimate, Judge, from 20 odd years experience, would be about five-eighths.

By Mr. ROBERTS:

Q. About five-eighths——

A. Yes, sir.

Q. (Continuing)—of the total?

A. Yes, sir.

Mr. ROBERTS. That is all.

Recross-examination by Mr. BIGGS:

Q. On what do you base that estimate?

331 Atlantic Steel Company.

Q. Do you know how much they each manufacture?

A. Not positively.

Q. Do you know how many ties are manufactured annually by the Carnegie Steel Company?

A. I should say about 2,000,000 bundles.

Q. 2,000,000 bundles?

A. Yes, sir.

Q. How do you know that?

A. Based on my estimate of about five-eighths of the output.

Q. That is what I am trying to get at. How do you know it is five-eighths, and know that it is 2,000,000 bundles?

A. I say I do not know it positively; it is just a combination of circumstances, running over twenty odd years of experience.

Q. The amount manufactured by the Carnegie Steel Company must vary each year, must it not?

A. Yes, sir; with the crop.

Q. Since the war has started, do you think that has had any

332 effect on the amount of ties in existence—as to the amount of ties they have been able to manufacture?

A. There has been no competition from imported ties.

Q. But you know the demand for steel and other products has been tremendous since the war started, and the Carnegie Steel Company does not have to manufacture these ties?

A. They have been manufactured by some one.

Q. You think the Carnegie Steel Company manufactures about five-eighths of all manufactured, and that its total is about 2,000,000 a year. I asked you if they had demands from all over for various steel products, they would not have to manufacture these steel ties, would they?

A. I do not say they had to.

Q. You do not know how many they manufactured in 1916 and 1917, do you?

A. I do not.

Mr. BIGGS. That is all.

(Witness excused.)

333 ED BRIN was called as a witness, and, being first duly sworn by the examiner, testified as follows:

Direct examination by Mr. THOM:

Q. Give your full name?

A. Ed Brin.
Q. Where do you live?
A. Terrell, Texas.
Q. What is your occupation?
A. Merchant.
Q. You deal in what commodities?
A. Deal in general merchandise, bagging and ties.
Q. That includes the bagging and tie business?
A. Yes, sir; I am manager of the Brin store at Terrell, Texas.
Q. Will you state if you had any difficulty in the years 1916 and 1917 in obtaining cotton ties?
A. Yes, sir; in 1916 it was very difficult to obtain cotton ties. We had, for years, been buying our cotton ties from Warren, Jones & Gratz. In the year 1916 they told us they were unable to
334 supply us with cotton ties and also in 1917. In 1916 I got a message from them to that effect, and skipped around and caught some other jobbers before they knew it, and bought a few ties from them, and finally squirmed around and got ties from other places, and managed to get enough to get through.
Q. Did your inability to get ties from Warren, Jones & Gratz cause you to pay more for the ties you did get?
A. Two to three hundred dollars a car more.
Q. More?
A. Yes.
Q. Mr. Brin, I hand you a letter dated June 24, 1916, addressed to the Brin stores, signed by Warren, Jones & Gratz. Will you please state if that letter was received by you in due course of mail?
A. It was.
Mr. THOM. We introduce that in evidence and ask that it be marked as an exhibit.
(The letter referred to was thereupon received in evidence and marked by the stenographer "Brin Exhibit No. 1," and the same is as follows:)
335 WARREN, JONES & GRATZ,
St. Louis, Mo., June 24th, 1916.
All deliveries subject to fires, breakage of machinery, strikes and other unavoidable circumstances.
THE BRIN STORE,
Terrell, Texas:
GENTLEMEN: Yours of the 24th. While we shall make our opening prices on bagging and ties next Monday, we can not at this time offer you any ties except with a proportionate quantity of bagging. In other words, if you buy from us 30,000 yards of bagging, we will sell you 1,000 bundles of ties. It is necessary to handle our business in this way owing to our small supply of ties.
Yours, truly,
WARREN, JONES & GRATZ.
HRN.

By Mr. THOM:

Q. I now hand you a letter dated June 26, 1916, addressed to the Brin Store, and ask you if you received that in due course of mail around about the date marked on the letter?

336 A. Yes, sir.

Mr. THOM. I ask that that be admitted in evidence and marked as an exhibit also.

(The letter refrred to was thereupon received in evidence and marked by the stenographer "Brin Exhibit No. 2," and the same is as follows:)

WARREN, JONES & GRATZ,
St. Louis, Mo., June 26, 1916.

All deliveries subject to fires, breakage of machinery, strikes, and other unavoidable circumstances.

THE BRIN STORE,
Terrell, Texas:

GENTLEMEN: Your letter of the 24th. Our supply of ties is limited—barely enough to go with the bagging we will sell. It may be possible that we will have some surplus ties after we get through selling ties with bagging, but this is very uncertain. As you are well aware, all steel manufacturers have been crowded with work for the past year or more, and it has been a difficult matter for us to induce any of them to make ties.

337 Yours, very truly,

WARREN, JONES & GRATZ.

HRM:M.

By Mr. THOM:

Q. Now, in connection with your difficulty in the year 1917 in getting ties, I will hand you this letter and ask if this was received by you in due course of mail, the letter being dated April 7th, 1917, and addressed to the Brin Stores, incorporated, signed by the Carnegie Steel Company?

A. Yes, sir; it was.

Mr. THOM. I offer that letter in evidence and ask that it be marked as an exhibit.

(The letter referred to was thereupon received in evidence and marked by the stenographer "Brin Exhibit No. 3," and the same is as follows:)

CARNEGIE STEEL COMPANY,
GENERAL OFFICES, CARNEGIE BUILDING,
Pittsburgh, Pa., April 18th, 1917.

THE BRIN STORE (INC.),
Terrell, Texas.

GENTLEMEN: Your letter of April 13th addressed to American Steel & Wire Company, Dallas, Texas, has been referred to us for attention, as the wire company does not manufacture cotton ties.

We can only say at this time we have no cotton ties to offer, but later in the season when the price is established we will be glad to take the matter up with you again and you no doubt will receive our prices through Warren, Jones & Gratz, St. Louis, Mo.

Thanking you for the inquiry, we are,

Yours, truly,

CARNEGIE STEEL COMPANY,
(Signed) W. G. CLYDE,
Asst. Gen'l Manager of Sales.

J. H. S./F. *J. H. S.*

By Mr. THOM:

Q. Now, Mr. Brin, I hand you several letters, all addressed to the Brin Store, running through the period of February, 1917–April, 1917, from different steel manufacturers, and I ask you if you received those in the due course of mail and around about the several dates mentioned in the letters?

A. Yes, sir.

339 Mr. THOM. I ask that those be admitted in evidence and marked as exhibits.

(The letters referred to were thereupon received in evidence and marked by the stenographer "Brin Exhibits Nos. 4 to 11," inclusive, respectively, and the same are as follows:)

[Brin Exhibit No. 4.]

LUDLOW MANUFACTURING ASSOCIATES,
111 DEVONSHIRE STREET,
Boston, Massachusetts, April 17, 1917.

Messrs. THE BRIN STORE (INC.),
Terrell, Texas.

GENTLEMEN: In reply to your letter of the 13th, we are not in a position to quote you ties, and so far as we are able to learn, no prices have yet been made by the manufacturers.

We thank you, however, for your inquiry.

Yours, very truly,

LUDLOW MANUFACTURING ASSOCIATION,
HENRY V. GREENOUGH,
H:S *Selling Agent.*

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340 [Brin Exhibit No. 5.]

CONNORS-WEYMAN STEEL COMPANY,
MANUFACTURERS OF STEEL HOOPS, COTTON TIES, STEEL BARS, BANDS AND THE "CONWEY" REINFORCED METAL FENCE POST,
1104–8 BROWN-MARX BUILDING,
Birmingham, Ala., April 16, 1917.

The BRIN STORE (INC.),
201 East Moore Ave., Terrell, Texas.

GENTLEMEN: Replying to your kind favor of the 13th, asking if we can not sell you some ties now. We have to advise that we have no ties

on hand at present, and doubtless will not begin making same until about July 1st. We therefore have no ties whatever to offer, and will not have until July 1st, at which time we shall be pleased to communicate with you.

Yours, very truly,

(Signed) G. W. CONNORS,
President.

C-P.

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341 [Brin Exhibit No. 6.]

ATLANTIC STEEL COMPANY,
BILLETS, RODS, BARS, TIRE, HOOP, COTTON TIES, NAILS,
WIRE FENCE, SPIKES, TIE PLANTS.
Atlanta, Ga., U. S. A., April 16, 1917.

The BRIN STORE (INC.),
Terrell, Texas.

GENTLEMEN: Acknowledging receipt of your favor of April 13, requesting quotation on 5,000 bundles of cotton ties, beg to say that we have no ties to offer as yet, and for that reason are unable to name you price.

We do not know of any concern in this city that would have any quantity of ties to offer at this time with whom we could place you in communication.

We appreciate very much your writing us in this connection, and beg to remain,

Very truly, yours,

(Signed) CHAS. F. STONE,
Manager of Sales.

EMBrown-Sha.

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342 [Brin Exhibit No. 7.]

CONNORS-WEYMAN STEEL COMPANY,
MANUFACTURERS OF STEEL HOOPS, COTTON TIES, STEEL BARS,
BANDS, AND THE "CONWEY" REINFORCED METAL FENCE POST.
1104–08 BROWN-MARX BUILDING,
Birmingham, Ala., April 7, 1917.

The BRIN STORE,
Terrell, Texas.

GENTLEMEN: We have your wire of even date, and did not telegraph you for the reason that we have no cotton ties to offer at this time, and at present are not quoting for extended deliveries.

We may have some ties to offer in July, but nothing before then. We thank you for wiring us, and are,

Yours, very truly,

S. H. MARING,
Asst. Sales Manager.

M-P.

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343 [Brin Exhibit No. 8.]

CONNORS-WEYMAN STEEL COMPANY,
Birmingham, Ala., Feby., 14, 1917.

The BRIN STORE (INC.),
201 East Moore Ave., Terrell, Texas.

GENTLEMEN: Both the Gulf States Steel Co. and the Concrete Steel Co., of this city, have kindly referred to us your inquiry of the 9th inst. for 1,000 bundles new cotton ties f. o. b. Birmingham.

We regret to advise that we have no cotton ties on hand just now, and do not contemplate rolling the same for some month, and are therefore unable to offer.

We hope that when the cotton-tie season opens, you will be good enough to favor us with your inquiries, which we solicit at all times, and regretting our inability to serve you at this time, we are,

Yours, very truly,

(Signed) D. H. MARING,
Asst. Sales Manager.

M-p.

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344 [Brin Exhibit No. 9.]

S-30

GULF STATES STEEL COMPANY,
GENERAL OFFICES, BROWN-MARX BUILDING,
Birmingham, Ala., U. S. A., Feby. 13, 1917.

The BRIN STORE (INC.),
Terrell, Texas.

GENTLEMEN: We are in receipt of your favor of the 9th inst. and regret that we are not in position to quote you a price on cotton ties as we do not manufacture them. However, we have taken the liberty of referring your inquiry to the Connors-Weyman Steel Company, of this city, who we feel sure will be in position to furnish your requirements along this line. They will write you direct as interested.

Yours, truly,

GULF STATES STEEL COMPANY,
(Signed) W. B. RIGGINS,
Sales Department.

Dict. W. B. R.

[Brin Exhibit No. 10.]

PITTSBURGH STEEL COMPANY,
Pittsburgh, Pa., February 7th, 1917.

Quotations subject to change without notice.

All agreements are contingent upon strikes, accidents, and other delays beyond our control.

(A33720)

The BRIN STORE (INC.),
Terrell, Texas.

GENTLEMEN: We are in receipt of your Western Union telegram reading as follows: "Wire to west prices two thousand bundles cotton ties immediate shipment," and in reply we wired you as follows: "Have no cotton ties to offer," which message we beg to confirm.

We do not have in stock one bundle of cotton ties, and owing to the unprecedented demand for hoop steel, which is rolled on our cotton tie mills, we do not expect to roll cotton ties prior to the opening of the market.

At the present time we could not give you any encouragement as to whether we could offer you any ties at the opening of the market, but if you care to take it up with us at that time, 346 kindly address your inquiries to the Pittsburgh Steel Company, Southwestern Life Building, Dallas, Texas, where they will have prompt attention.

Yours, very truly,

PITTSBURGH STEEL COMPANY,
(Signed) ERNEST H. McKINLEY,
Sales Agent.

EHM-D.

[Brin Exhibit No. 11.]

LEVI JOY & CO.,
JOBBING BROKERS, MANUFACTURERS AGENTS,
736 RANDOLPH BLDG.,
Memphis, Tennessee, February 14th, 1917.

The BRIN STORE (INC.),
Terrell, Texas.

GENTLEMEN: We are in receipt of your letter 11th inst., addressed to the American Cotton Oil Co., whom we represent in this market in the sale of their refined cooking oil.

As we are handlers of cotton ties also we are in position to 347 advise you as to the market there on cotton ties. Upon inquiry we find that there are only a few ties being stored here for Warren-Jones & Gratz and they will sell them only in a small lots to their trade in this territory. We are unable to get a price in a carload from anyone.

We are sorry not to be able to get your price on a car from here and hope you will have better luck elsewhere.

Thanking you for the inquiry, we are,

Yours, very truly,

(Signed) LEVY JOY & Co.,
Agents.

223.

By Mr. THOM:

Q. Now, Mr. Brin, do you remember the cotton ties season of 1916?

A. Yes, sir.

Q. Will you state, on or about September 25, 1916, whether the cotton tie season was practically over, or whether it was not?

A. What was the question?

Q. Whether the cotton tie season was over by the 25th of September, 1916?

348 A. Yes, sir; it was practically over; it was practically over.

Q. I mean in your immediate neighborhood?

A. Yes, sir; in my immediate neighborhood.

Q. Do you know how that was with regard to Texas, generally?

A. It was just about the same all over the State—practically over. We had most all purchased early, and if they waited that long, it is all over.

Mr. THOM. The witness is with you.

Cross-examination by Mr. BIGGS:

Q. You say you are a general merchant?

A. Yes, sir; we do a general mercantile business.

Q. Are you a jobber or a dealer?

A. No, sir; we do a retail business.

Q. Do a retail bagging and tie business?

A. Yes, sir; retail and wholesale, too.

Q. What amount of bagging and tie business do you do on an average?

A. Well, we do from $50,000 to $100,000.

349 Q. I am speaking of the number of yards of bagging you handle and the number of ties you handle on an average each year.

A. It would be rather hard to answer that question right offhand. We generally handle, I think, around 2,000 bales of sugar bagging.

Q. About 2,000 bales of sugar bagging?

A. Yes, sir; that is 300 yards to a bale.

Q. That would be 600,000 yards of sugar bagging—60,000 yards of sugar bagging—is that about the average amount you handle?

A. Yes, sir; and then it takes about ten bundles of ties to every bale of bagging.

Q. How many bundles of ties do you usually handle?

A. About 20,000 bundles.

Q. 20,000 bundles?

A. That is in good seasons, when we can get the stuff. The last few years we have had such difficulty——

Q. How many bundles of ties did you sell in 1916, in all?

A. I could not answer that correctly. I could not answer that just exactly correctly. I think, in 1916, we were randicapped—could not get any ties. I think I handled about 10,000 bundles
350 of ties that year, if I recollect correctly. Also in 1917, we were kind of handicapped and could not get any ties.

Q. Did you handle any bagging in 1916, outside of the sugar bagging?

A. No, sir; nothing but sugar bagging.

Q. That is all you handled—you did not handle the regular bagging?

A. Well, I think we bought, in the latter part of 1915, and carried it over, some 1¼ jute bagging from Warren, Jones & Gratz.

Q. When was that?

A. I think it was the later part of 1915—from Vicksburg or Natchez.

Q. You carried that over to 1916?

A. Yes, sir.

Q. How much was there of that?

A. I think just one car. In our country they will not have anything but the sugar bagging. It is very easy to put on the bale. It is already cut.

Q. From whom did you get that?

A. Two or three different people—Arbuckles, mostly, what we handle, and various other jobbers and refiners.

351 Q. Did you ever get any from Young & Metzner?

A. Yes, sir; we used to handle quite considerable from Young & Metzner. Mr. Silly, their state representative at Dallis, and we did not gee very well.

Q. You say you did not get along with him very well and that is the reason you did not buy from Young and Metzner?

A. I always got better prices, and Mr. Silly generally got sore and I did not ask him any more.

Q. Did you ever try to buy any ties from Young & Metzner, the people you got sugar bagging from?

A. They do not handle cotton ties, as a rule. I do not think they do.

Q. Did you ever ask them?

A. No; I never asked them.

Q. You do not know they do not, do you?

A. I know Mr. Masson. I think he is general manager of Young & Metzner in New York. I know him, and I think, when I was in the city of New York, I talked about it. He never said anything to me about handling ties.

Q. I asked if they ever handled ties and whether or not you tried to buy any from them?

A. I believe I did.

352 Q. You were in New York and talked about things generally.

A. Yes, sir; talked about everything.

Q. From whom did you buy your ties, in 1916?

A. In 1916?

Q. Yes.

A. I bought some from the Rotan Grocery Company. I do not know whether it is Rotan or the Sheer Company.

Q. It was the Sheer Company, was it not?

A. Yes, sir.

Q. Where are they?

A. At Waco.

Q. You bought some from them?

A. Yes, sir.

Q. How many?

A. Two or three thousand bundles, and bought some from Graves.

Q. Do you know how many you bought from the Sheer Company?

A. I could not state positively. I do not know exactly.

Q. You bought some from Graves?

A. Yes, sir.

353 Q. How many?

A. I do not know positively how many I bought from him. I think it was a couple of thousand. I think it was. I am not sure, and I bought some from the Atlantic Steel Company, of Atlanta, Georgia.

Q. How many did you get from them?

A. I think two or three thousand; I am not sure.

Q. Two or three thousand?

A. Yes, sir.

Q. From whom else did you buy?

A. I think I bought some from Blair Hughes, of Dallas.

Q. From Blair Hughes, of Dallas?

A. Yes, sir.

Q. How many?

A. I really could not tell exactly—one or two thousand. I do not know.

Q. From whom else did you buy?

A. I can not state offhand. I would have to go to my ledger.

Q. Did you buy any from Connors-Weyman?

354 A. I think I did. I think I bought a thousand bundles—1916?

Q. Yes.

A. I bought—first I bought a car from Mr. —. He is the fellow who testified from Waco.

Q. Mr. Foster?

A. Yes, Mr. Foster; and it came from the Connors-Weyman Steel Company. We wired them direct and we have bought one or two cars from them.

Q. That is, 1916?

A. Yes, sir.

Q. You bought one or two cars?

A. I think it was one or two cars. That is just my recollection.

Q. How many bundles to a car, on an average?

A. Well, out in our State I think it runs about 800 bundles.

Q. 800 bundles?

A. Yes; I think about that time that was the minimum car.

Q. Was there anybody else you bought from in 1916?

A. I do not recollect. I do not think there was. I can not just call to memory.

Q. These ties you got from the Sheer Company at Waco—you say you got two or three thousand bundles?

A. I bought them right on the opening of the market. In Memphis—immediately when I found Warren, Jones & Gratz would not sell us any, I called him up and he was not aware of the fact, and he sold us some, and I tried to buy some more, and he crawfished out of it and would not sell any more, and I had to get them wherever I could.

Q. It was in June, 1916, that you bought ties from the Sheer Company?

A. I believe it was. The market opened a month earlier than it did the year before. I think it did.

Q. You were not required to buy any bagging from any people you bought ties from, including the Sheer Company; you bought ties alone?

A. Yes, sir.

Q. You bought two or three thousand bundles from the Sheer Company, coming from Warren, Jones & Gratz?

A. I do not know where they came from.

Q. Do you know what kind of ties they were?

A. I think they were Carnegie Steel Company ties.

Q. That was right at the opening of the market in 1916?

A. Yes, sir; it was right at the opening—I think it was the day it opened.

Q. The day it opened?

A. I know I bought those ties before Rotan was aware he could not get any.

Q. Rotan?

A. The Sheer Company, Mr. Redmond. I think he was in charge of the bagging and tie department of the Sheer Company.

Q. These letters which have been identified as exhibits, Brin Exhibits 1 and 2, of date June 24, 1916, and June 26, 1916, which have been offered in evidence—is this the only time during 1916 or 1917 that you tried to buy ties from Warren, Jones & Gratz?

A. It might be I tried to earlier than that.

Q. You know the market did not open up until about this time?

A. Yes, sir; I think I wrote them sometime in February.

357 Q. In February—you would not expect to buy ties in February, would you?

A. Why, any time I could.

Q. But, as a general rule in the trade, you know there were no ties on the market in February?

A. Yes, sir; I think there are. I think I got two or three thousand this winter in February—just took them up.

Q. You know Warren, Jones & Gratz could not sell ties, because the mills do not know what they can do until later in the season.

A. I do not know. They generally control it all, and anything they say goes.

Q. How do you know that?

A. Well——

Q. You just told us you bought ties from several—five or six—distinct concerns outside of Warren, Jones & Gratz, didn't you? In 1906, one, two, three—five different concerns.

A. Yes, sir; but they are the largest one.

Q. Did you ever try to buy ties from the Ludlow Manufacturing Association, in Boston?

A. Yes, sir; I tried this year and they would not sell them to me.

358 Q. As I understand you, this is the only time you ever tried to do business direct with Warren, Jones & Gratz in reference to ties—June 24 and 26, 1916—is that true?

A. I think I tried them in February of that same year.

Q. Any other time?

A. I do not think I tried them afterwards—after I found they would not sell me. Wait—later on in that same year I think I tried. I think I have a letter here from them. They offered to sell me some ties about the end of the season, through Galveston. I think this is the one [exhibiting letter].

Q. What did they say—did they offer to sell ties later on?

A. Yes, sir; for December shipment.

Q. For what?

A. December shipment, for 1916. They offered to sell some for shipment in December, 1916.

Q. When did they make that offer to you?

A. I tore the top of the letter off. Let me see——

359 Q. What was the trouble in February, 1916? You say you think you took it up with them at that time to buy ties. What did they say then?

A. I have my own conclusions, but I do not care to say.

Q. What did they say? Did they say they did not have ties at that time?

A. They said they were short of ties and did not have ties except to match the bagging. That is what they wrote me.

Q. In 1917, did you have any communication with Warren, Jones & Gratz about ties?

A. Yes, sir.

Q. Did you buy any ties from them?

A. I tried to buy them, but I could not, except in September. I was up in St. Louis. I was up there talking to Mr. Murray, and Mr. Murray offered to sell me——

Q. In September?

A. About the 15th or 20th of September. Mr. Murray offered to sell me some ties then.

Q. Did you make any complaint to the Federal Trade Commission?

360 A. I did not. The Federal Trade Commission wrote me in reference to this matter and asked me for all the literature I had, and I told them I would send it all to them; no, sir; I never made the first complaint. After they wrote me about it I wrote them.

Redirect examination by Mr. THOM:

Q. Mr. Brin, that December shipment—that offer of Warren, Jones & Gratz, rather—to sell you ties for December shipment, that was after the cotton tie season was over, was it not?

A. Yes, sir; after it was over.

Q. You stated that you handle sugar bag cloth?

A. Yes, sir.

Q. Is that a more popular brand than the jute bagging?

A. Well, now, in our vicinity it is.

Q. And from the point of view of salability, you would rather handle that than the other?

Answer. Yes, sir.

Mr. THOM. That is all.

361 Recross examination by Mr. BIGGS:

Q. You say the season was over in December?

A. Oh, yes.

Q. It was over in February, too, when you tried to buy them from Warren, Jones & Gratz, was it not?

A. Well, we were buying for that year. I would say it was just about starting then. It was a new year.

Q. You did not want to buy them in December for the coming year, but in February you did?

A. Yes, sir; I think I bought some in December.

Q. You bought some for the next year?

A. Yes, sir; kind of speculating.

Q. You bought some for the next year?

A. Yes, sir.

Q. You thought they would go up, and wanted all you could get?

A. Yes, sir.

Q. But you did not take these, did you?

A. I did not want to carry any more than I thought I was able to carry.

341 Q. You are able to do a good deal of speculating in ties?

A. Just in a small way—five or ten thousand bundles.

Q. Did you carry over any from 1916 to 1917?

A. I think it was 4,000 bundles I carried over.

Q. Carried them over?

A. Yes, sir.

Q. Well, you made money on them, didn't you?

A. Yes, sir; I made some money on them.

Q. Did you carry over any from 1915 to 1916?

A. I do not think I carried but about 1,000 bundles over.

Q. How many are you going to carry over this year?

A. I have not so many. I could carry over 400 or 500 bundles. I am kind of embarrassed in ties.

Mr. BIGGS. That is all.

(Witness excused.)

(Whereupon, at 4.15 o'clock p. m., an adjournment was taken until tomorrow, Tuesday, October 23, 1917, at 9 o'clock a. m.)

363 Before the Federal Trade Commission.

THE FEDERAL TRADE COMMISSION

vs.

WARREN, JONES & GRATZ.

THIRD DAY.

ROOM 300, U. S. POST OFFICE,

New Orleans, Louisiana, October 23, 1917—10.30 o'clock a. m.

The hearing was resumed, pursuant to the taking of adjournment on yesterday.

Present, Special Attorney George McCorkle, sitting as examiner.

Appearances (as heretofore noted).

The EXAMINER. Call your first witness.

364 J. C. WERNER was called as a witness, and, being first duly sworn by the examiner, testified as follows:

Direct examination by Mr. ROBERTS:

Q. You are Mr. J. C. Werner?

A. Yes, sir.

Q. With what firm are you connected?

A. Mente & Company.

Q. At New Orleans?

A. Yes, sir.

Q. What kind of business is that firm engaged in?

A. The manufacture of burlap bags and bagging.

Q. And bagging?

A. Yes, sir.
Q. Do you manufacture ties?
A. Not new ties.
Q. You manufacture—fix up old ties?
A. Yes, sir; fix up old ties.
Q. What efforts did you ever make to purchase ties from C. O. Elmer & Company, of New Orleans?
365 A. Well, we have dealt with Warren, Jones & Gratz through their New Orleans representatives for numerous years.
Q. Who are the New Orleans representatives?
A. O. Elmer & Company. We have——
Q. Is C. O. Elmer a member of the firm of O. Elmer & Company?
A. Well, O. Elmer & Company, in former years—I believe up to two years ago—was the father, Otto Elmer. I do not know whether Charlie was connected with the firm then except as a clerk, but I think in late years it has been transferred to Charlie Elmer.
Q. What is the style of the firm now—is it C. O. Elmer?
A. I think it is C. O. Elmer now.
Q. State what neogtiations you had with them at any time, or what efforts you made to purchase ties from them?
A. I have often been able to buy ties from Warren, Jones & Gratz, but of late years—that is, from 1915 on—we have not been successful in buying many ties from Warren, Jones & Gratz, because they insisted on our buying bagging with the ties, and we manufacture a sugar bag cloth and we need more ties than we do bagging—that is, we buy bagging also from Warren, Jones & Gratz, but we need
366 more ties than bagging.
Q. So, when you buy ties from Warren, Jones & Gratz, it does not always suit you to buy the corresponding amount of bagging?
A. No, sir; we are always in the market for about 40 or 50 more thousand bundles of ties than the same patterns of bagging. Bagging is sold by pattern.
Q. When was it you undertook to buy ties from them and could not get them on account of——
A. The first recollection I have is in 1915 that we could not buy ties. In fact, we bought 20,000 bundles of ties from Warren, Jones & Gratz through Elmer in 1915; that is, we thought we bought them. They offered ties and we bought them and accepted and they wired back they could not sell ties unless we bought 60,000 yards of bagging.
Q. Did you buy the bagging?
A. No, sir; we did not buy the bagging, only the ties.
Q. Did they refuse to ship the ties?
A. They offered the ties—Mr. Elmer—and we accepted them,
367 and the same day—of course we had to wire to St. Louis—and the same day they wired back they could not sell the ties unless we bought the bagging.
Mr. Biggs. Did they wire that to you?
A. No, sir; it must have been to Mr. Elmer.

Mr. BIGGS. I think the witness should tell what he knows in this matter.

The WITNESS. Well, we offered—I have the correspondence here.

By Mr. ROBERTS:

Q. Did Mr. Elmer tell you he could not let you have the ties?

A. Yes, sir.

Q. On account of your not buying bagging?

A. Yes, sir.

Q. Was that C. O. Elmer?

A. It was 1915. I do not know which Elmer it was.

Q. Was C. O. Elmer connected with the firm at that time?

A. He was in the office. I do not know whether he was one of the members of the firm or not.

Q. Did anything like that happen at any other time after that?

368 A. Yes, sir; we have endeavored to buy ties from them.

Q. In what years?

A. In 1916. In 1917 I did not endeavor to buy any ties from them.

Q. What success did you have in 1916?

A. I think I bought a few ties from Warren, Jones & Gratz, in September, 1916, without the bagging. I am not sure. I would prefer to refer to the correspondence for that.

Q. Did they, or not, ever refuse to let you have what ties you wanted in 1916?

A. I can not state positively they did, and I could not say they did not, in 1916.

Q. What statements did they ever make to you, if any, in 1916, as to their——

A. I have no records of that at all, whether they refused to ship the ties in 1916.

Q. The only instance you remember was in 1915?

A. In 1915 I know of my correspondence. I know in 1916, when I bought ties from the Connors-Weyman Company, of Birmingham.

369 Q. Why was it you did not endeavor to secure ties from Warren, Jones & Gratz?

A. Because we had the impression we could not get ties unless we bought bagging.

Q. How did you get that impression?

A. Well, from the year 1915.

Q. What kind of bagging do Warren, Jones & Gratz sell—what brand of bagging?

A. They sell three or four different brands, American, Texas, and Union. That is the only kind we have bought from them.

Q. Do you know where the bagging is manufactured which they sell?

A. I think most of it in St. Louis.

Q. Do you know anyone in New Orleans who handles ties or bagging for Warren, Jones & Gratz, except O. Elmer & Company?

A. No, sir; unless jobbers that buy—anybody——

Q. If buyers buy from Warren, Jones & Gratz—jobbers or dealers of any kind buy from Warren, Jones & Gratz—through whom do they buy?

370 A. Through Elmer. I am not positive. I understand through C. O. Elmer & Company.

Q. You understand that?

A. Yes, sir; as their New Orleans representative.

Q. Did you ever undertake to buy ties direct from the Carnegie Steel Company at any time?

A. Well, we have written to the Carnegie Steel Company, the Pittsburg people and the Atlanta concern, and Connors-Weyman. We have written to all of them—the Sharon Steel Company——

Q. The Sharon Steel Company?

A. Yes, sir.

Q. What did the Carnegie Steel Company do about it—to whom did they refer you, if anyone?

A. Generally they referred us to Warren, Jones & Gratz.

Mr. ROBERTS. You may examine, Mr. Biggs.

Cross-examination by Mr. BIGGS:

Q. Mr. Werner, you say you were in the business of manufacturing burlap and bagging?

A. Yes, sir. We manufactured heavy bagging.

371 Q. Do you handle also sugar cloth?

A. Yes, sir.

Q. You manufacture ties yourself?

A. Yes, sir; secondhand ties; that is, we were not doing that in 1915. We commenced manufacturing secondhand ties in about 1916.

Q. And since then you have not tried to buy any ties from Warren, Jones & Gratz?

A. Oh, no; in 1916 we bought some ties from Warren, Jones & Gratz.

Q. I understood you to say a while ago you did not, since 1915.

A. No, sir; I said 1917. In 1916 we bought ties from Warren, Jones & Gratz.

Q. You bought ties from Warren, Jones & Gratz in 1916?

A. Yes, sir; through Elmer.

Q. Through Elmer & Company?

A. Yes, sir.

Q. Did you buy bagging from them at the same time?

372 A. Not at the same time—we bought ties and bagging. We did buy 2,500 bundles, I think, through Elmer, without the bagging.

Q. In 1916?

A. Yes, sir.

Q. You did not buy any in 1917?

A. In 1917 we did not try to, but we bought——

Q. After this experience you told us about in 1915, then, when you say some one here—Elmer—you do not know which Elmer—told you they could not sell you ties without bagging, you did not make that trade at that time?

A. No, sir; they got us ties, and we bought 25,000 bundles of ties.

Q. Did they offer you that or you ask them?

A. They quoted us and we accepted, but the same day they must have received a wire from St. Louis and said they could not sell us the ties without buying a corresponding amount of bagging.

Q. That was in 1915?

A. Yes, sir.

Q. You do not know which Elmer it was?

A. No, sir; it was over the phone. I do not know which it was.

373 Q. Do you know about the time of the conversation?

A. July 7, 1915. I do not remember that except from the correspondence.

Q. You have refreshed your memory by looking over your files?

A. Yes, sir.

Q. When 1916 came along you tried to buy some ties from Warren, Jones & Gratz and did buy some without bagging?

A. I do not know whether I endeavored to buy at the opening of the market ties without bagging or not, but I know I bought ties in September from Elmer without bagging.

Q. Don't you remember you bought some in August—about August 24?

A. That is the lot I was referring to.

Q. F. o. b. Galveston, without bagging?

A. Yes, sir; that is the lot I was referring to.

Q. And also in September—did you also buy at that time a thousand bundles of ties f. o. b. Galveston, without bagging?

A. Yes, sir.

Mr. THOM. When was that?

374 Mr. BIGGS. September 20th.

By Mr. BIGGS:

Q. On November 13th, didn't you buy a thousand bundles of ties from Warren, Jones, & Gratz, f. o. b. Galveston?

A. I did not look up the records, but towards the end of the season we always buy some.

Q. That is the only time you tried in 1916?

A. I did not say that.

Q. Didn't you look up your files?

A. We do not have any files. It would be generally by personal conversation.

Q. If Mr. Elmer said you did not buy any ties in 1916 except on these occasions, when you got them, would you be willing to say he is right about that because you do not remember?

A. I do not remember.

Q. If you had tried to get ties from them in 1916 without bagging and they refused to sell you, you would be pretty apt to remember it, would you not?

A. I bought my ties in 1916 from Connors-Weyman.

Q. You did not have any trouble in getting them?

A. I paid about 25 cents a bundle more.

375 Q. You say you do not remember trying to get them from Warren, Jones & Gratz?

A. I say I do not remember trying. My impression was that they would not sell ties without the bagging.

Q. That was your impression?

A. Yes, sir.

Q. You did not think it was worth while for you to go and try——

A. I might have asked Elmer or Warren, Jones & Gratz would they sell ties in 1916. I do not remember that.

Q. But you do remember the transaction in 1915?

A. Yes, sir; I remember I bought ties in 1915, but they would not confirm the purchase.

Q. On account of this impression that existed in your mind because of what happened in 1915 with Mr. Elmer over the phone, you are not able now to state whether or not you made any effort in 1916 to purchase ties without bagging from Warren, Jones & Gratz?

A. No, sir.

376 Q. Well, what about 1917? Do you know you did not try to buy ties without bagging from Warren, Jones & Gratz in 1917? That is a little earlier down—maybe your memory is better about that.

A. Yes, sir; in 1917 we bought bagging and ties from Warren, Jones & Gratz, and I asked Mr. Elmer would they sell me any ties. Mr. Elmer's reply was that they were so scarce this year that they did not care to sell any ties. He did not state, though, with or without bagging.

Q. He did not state that?

A. No, sir; I had already bought my bagging and ties from Warren, Jones & Gratz before the season opened, and also from Connors-Weyman.

Q. Did you try to buy them from other places, like the Pittsburgh Steel Company, or——

A. Yes, sir; we wrote to the Pittsburgh Steel Company and the Atlantic Steel Company, Connors-Weyman, and we could not buy except from Connors-Weyman.

Q. You bought of those without first trying to buy from Warren, Jones & Gratz?

A. No, sir; I stated I asked Mr. Elmer if he would sell some ties, but on account of the scarcity he would not offer any.

377 Q. That was in 1917?

A. Yes, sir.

Q. In 1916 you brought your ties from Connors-Weyman the same way?

A. Yes, sir; before the opening.

Q. You had your wants supplied by contract with Connors-Weyman in 1916?

A. I wanted to be sure to have ties to sell with the sugar cloth.

Q. Naturally, you did not try to get any from Warren, Jones & Gratz?

A. I say I do not remember trying.

Q. Later on, in 1916, when you did not have quite enough and wanted ties, you went to Warren, Jones & Gratz, through Elmer, and bought your ties?

A. Yes, sir.

Q. You got all you wanted without buying bagging?

A. Yes, sir.

Q. This year, in 1917, you have not bought ties, as I understand?

A. Not from Warren, Jones & Gratz—yes; I bought bagging and ties from Warren, Jones & Gratz.

378 Q. Didn't you also buy some ties from Warren, Jones & Gratz this year without purchasing bagging?

A. I do not think so, unless in small lots.

Q. Let us refresh your memory; along in February last of this year, didn't you make a contract to get 100,000 yards of bagging and some ties?

A. I stated bagging and ties, and later on got some more bagging and ties.

Q. I asked you if you did not, on January 23, 1917, buy some ties from Warren, Jones & Gratz?

A. I do not call that this year. I call that last year. Generally in the cotton business, it would be last year.

Q. On the 24th and 25th of January you bought some ties without buying bagging, from Warren, Jones & Gratz?

A. I call that last year.

Q. Would you call purchases made on February 3 and February 16, 1917, of ties without bagging—would you call them on account of last year's business, too?

A. Yes, sir; because the cotton crop starts in August.

379 Q. Why did you want to buy them that late in the season?

A. It must have been small amounts, unless I bought bagging and ties.

Q. No; I am speaking of ties alone.

A. It must have been small amounts—linters or something like that.

Q. They come in at the end of the season?

A. Yes, sir.

Q. This year you bought your ties from the Birmingham concern?

A. I bought bagging and ties from Warren, Jones & Gratz, and also some ties from the Connors-Weyman Company.

Q. How much of a business do you do, on the average, Mr. Werner, in bagging and ties—how many yards of bagging and how many bundles of ties?

A. It changes sometimes—about a million yards of bagging—cotton bagging, and not sugar bagging—and about 40 to 50 thousand bundles of ties. We used to do a great deal larger business, but we have not endeavored to do much business in bagging and ties, lately.

Q. What bagging do you handle principally?

180 A. Well, we handle all of the Warren, Jones & Gratz, the Texas and Union——

Q. Handle any from Ludlow?

A. We did handle it in former years.

Q. You do not handle it now?

A. We did not handle it to any extent any year. We generally worked with Warren, Jones & Gratz.

Q. Did you handle foreign-made bagging before the war started—Calcutta and Dundee?

A. Very little.

Q. In 1915, 1916, and 1917 you have been able to get all the cotton ties that you needed in your business, have you not?

A. Yes, sir; by paying the price.

Q. You want us to understand that you give that answer here, "by paying the price," when you do not remember whether or not you tried to make an effort to buy ties from Warren, Jones & Gratz?

A. In 1915 I did buy——

Q. But in 1916?

A. You asked in 1915, 1916, and 1917, and I answered collectively. In 1916, I do not remember.

181 Q. You do not remember whether you made any effort?

A. No, sir.

Q. Let us find out what other efforts you made. I believe you said you wrote to the Pittsburgh Steel Company. Did you ever write to the Sharon Steel Company?

A. Yes, sir; not only wrote to them, but went to see them when I went to New York. I think it was the Sharon—I forget the name—I know it was some steel company.

Q. Did you ever try to buy any ties from the Ludlow Manufacturing Association?

A. I do not remember.

Q. They advertise that they sell ties?

A. I do not think so. I never tried to buy any.

Q. In the past, when you handled Ludlow bagging, did you try to buy ties?

A. I never handled Ludlow bagging except through brokers.

Q. You do know, as a matter of fact in the trade, that the Ludlow Manufacturing Associates do handle ties, don't you?

A. Yes, sir; but not to any extent.

182 Q. When you spoke of a pattern—stuff sold by the pattern—explain to us what that means?

A. Well, a pattern in Texas is six yards of bagging and one-fifth of a bundle of ties.

Q. Enough ties to go with it?

A. Yes, sir; six ties and six yards of bagging.

Q. That is the way the business is done?

A. Yes, sir; in Texas.

The EXAMINER. Enough to cover one bale of cotton?

A. Yes, sir.

By Mr. BIGGS:

Q. And any dealer or anybody who wants bagging wants ties to go with it?

A. Yes, sir.

Q. And that is the way the business is conducted—anybody handling bagging handles ties, and vice versa, necessarily?

A. Yes, sir.

Mr. BIGGS: That is all.

By the EXAMINER:

Q. You manufacture this sugar cloth, do you?

A. Yes, sir.

Q. What do you manufacture that out of?

383 A. Cuban sugar bags, second hand. After they empty the sugar from the bags—some of them we use again, but when we get orders we make them into sugar-bag cloth.

Q. Does it make a very good bagging?

A. Very good; in fact the demand is increasing every year for it.

The EXAMINER. That is all.

Redirect examination by Mr. ROBERTS:

Q. Mr. Werner, when does the season open for bagging and ties—about what time?

A. There are different dates it opens. Generally the season is opened by Warren, Jones & Gratz.

Q. They opened in May this year, did they not?

A. I think they did; yes, sir.

Q. They quote the price f. o. b. Pittsburgh, and that is called the opening price—is not that the way it is done?

A. Yes, sir.

Q. Is it a fact that there are other manufacturers of ties

384 that then quote the same price? How do Connors-Weyman & Company get at their prices?

A. I think they use the basis of Pittsburgh to establish their price. That I could not tell. They quote an f. o. b. Pittsburgh price.

Q. That is the way Connors-Weyman make their price?

A. Yes, sir; they also quote an f. o. b. Birmingham price.

Q. The f. o. b. Birmingham price is the Pittsburgh price plus the freight rate from Pittsburgh to Birmingham, is it not?

A. Not necessarily. One year I bought differently from that.

Q. You spoke about buying from them one year.

A. That is the year.

Q. How did they get at the price at Birmingham?

A. I can not state how they get at the price of ties. If I were manufacturing ties I think I would arrive at my price by basing it on the Pittsburgh price.

Q. I ask you why you have to pay more in Birmingham than you would if you bought them from Warren, Jones & Gratz?

A. Because they would not sell them to me at a lower price.

385 Q. Does this not prove that people like the Atlanta concern and the Birmingham concern quote them f. o. b. Pittsburgh and then add the freight from Pittsburgh to Birmingham or Atlanta, as the case may be, and then add the freight from Birmingham or Atlanta to New Orleans?

A. No, sir; they generally figure the f. o. b. Pittsburgh price plus the regular rate of freight from Pittsburgh to New Orleans or any other destination you want. That is done generally, but sometimes they will not.

Q. If you buy from Birmingham, would you have to pay that price plus the freight down here, then plus freight from Birmingham here?

A. No, sir; as I stated, they generally figure and sell on the opening price, figuring on the Pittsburgh market plus the freight from Pittsburgh to New Orleans. They generally do, but in the last two or three years I have not been able to buy them at that price, with some exceptions.

Q. Is it not a fact, Mr. Werner, that the Atlanta and Birmingham mills only make *a* small quantities of ties?

A. Yes, sir.

386 Q. I asked you about when the market opened. Mr. Biggs asked you a while ago about some purchases made by you in 1915—August 24, September 20, November 13, 1916. State whether or not is i ttrue that those ties—that the season was virtually over.

A. In August it is not virtually over, but in 1916 it was a year that fooled us a great deal. We anticipated large demands for bagging and ties, and in the last part of August it fell off very suddenly, and there were no more large demands for bagging and ties.

By Mr. Biggs:

Q. That was on account of the crop conditions, was it not?

A. I do not know about the crop conditions. We anticipated large demands, but there were not large demands. Everybody thought their sales of bagging and ties would be very much larger.

By Mr. Roberts:

Q. In this territory, is it true that by September 20th the bulk of the business has already been done in bagging and ties?

A. In normal years; yes, sir. In 1913 it went away up into
387 the last part of October, but since then it has been about the middle of September.

Q. Business closes about the middle of September?

A. Of course you get spasmodic orders up into October.

Q. Just small orders, to fill in?

A. Yes, sir; that somebody might not have bought quite as much as he needed, and the crop might have been a little larger than he anticipated in that territory, and wanted *some more bagging or ties* or both, to fill out the requirement.

Mr. ROBERTS. That is all.

Recross-examination by Mr. BIGGS:

Q. Mr. Werner, did you carry over any ties from 1915 to 1916?

A. Well, we generally buy just about our requirements. We carry over, maybe, four or five thousand bundles.

Q. Did you carry over any from 1916 to 1917?

A. We carried over about 1,400 bundles.

Q. You aim to buy just the amount of ties you need?

388 A. Sometimes we buy and store on people's account, thinking they are going to order, and they do not, and we carry them over.

Mr. BIGGS. That is all.

(Witness excused.)

C. LEE MCMILLAN was called as a witness, and, being first duly sworn by the examiner, testified as follows:

Direct examination by Mr. ROBERTS:

Q. I will ask you to give your name and the style of your firm, Mr. McMillan.

A. C. Lee McMillan & Company (Ltd.). I am C. Lee McMillan.

Q. You are engaged in business in New Orleans?

A. Yes, sir.

Q. How long have you been in business here, Mr. McMillan?

A. About thirty years.

Q. How long have you been in the bagging and tie business?

A. About thirty years, sir.

389 Q. Do you deal in anything else besides bagging and ties?

A. Cotton.

Q. Mr. McMillan, who are the general selling agents of Warren, Jones & Gratz in the city of New Orleans?

A. Mr. Charles O. Elmer.

Q. What firm did he succeed?

A. O. Elmer & Company.

Q. About how long ago was it that the style of the firm was changed to C. O. Elmer & Company?

A. About a year ago.

Q. Before that time did Mr. C. O. Elmer have any connection with the firm of O. Elmer & Company?

A. He managed the office.

Q. What effort did you make in 1915 or in 1916 to buy bagging and ties from Warren, Jones & Gratz through C. O. Elmer, or O. Elmer?

A. Upon the opening of the market I asked if they would sell me.

Q. What year was that?

A. 1915.

Q. Go ahead and just detail, through each of these three years, what negotiations or dealings you have had with the firm—the firm of Elmer & Company.

Mr. Biggs. Ask him to give the times and circumstances.

By Mr. Roberts:

Q. Give the times and circumstances, as nearly as you can, of your dealings or your efforts to deal with them.

A. About the opening of the market in 1915 I asked Mr. O. Elmer if he would sell me bagging and ties. He said he would very gladly do so if St. Louis approved—meaning Warren, Jones & Gratz—and in a day or two told me that he regretted very much that the St. Louis office would not sell me. He read me a letter he wrote them offering to guarantee any transactions that I might have with Warren, Jones & Gratz. They still declined to sell me.

Q. Now, in 1916——

A. About the same results. Mr. Elmer, senior, and Mr. C. O. Elmer, were both anxious to sell me, as it would increase their sales in the New Orleans market. They stated St. Louis would not approve selling me.

Q. What did you tell them about your ability to meet the sales or anything of that sort?

A. That was not necessary. Both Mr. Elmer and his son knew I was able to meet any bill, and that is the reason Mr. Elmer was willing to guarantee any contract I might make, Mr. Elmer being a man of means.

Q. Did you try to buy ties or ties and bagging in 1916?

A. Those years I tried to buy, both in 1915 and 1916.

Q. And could not get either?

A. No, sir.

Q. In 1917 what negotiations did you have with them with reference to bagging and ties?

A. At the opening of the market I asked Mr. C. O. Elmer if he would sell me ties. His reply was their stock was limited and he would have to submit it to St. Louis. I asked him to write the St. Louis office to find out from them if they would be willing to sell me ties, and if not, I would stop asking him for prices. In a few days Mr. Elmer told me he had received word from St. Louis that he would not sell me ties.

Q. Prior to 1915 where did you usually obtain your supply of ties?

A. In America and in England.

Mr. BIGGS. Prior to 1915?

Mr. ROBERTS. Yes.

By Mr. ROBERTS:

Q. From whom did you get them in America—those that you bought here?

A. Warren, Jones & Gratz, the Pittsburgh Steel Company, Connors-Weyman Steel Company, the Atlantic Steel Company—the Atlanta Steel Company it was at that time—you asked in America, didn't you?

Q. I will not ask about those you got in England, because I do not know that that is material. Where have you been buying your bagging recently, Mr. McMillan, for the last five or six years?

A. Ludlow Manufacturing Associates, Liverpool, Dundee, Scotland, Calcutta, and some from Messrs, Warren, Jones & Gratz.

Q. Did Mr. Elmer tell you at the time that he declined to sell you any ties, or ties and bagging—did he ever give a reason why Warren, Jones & Gratz refused to fill your orders?

A. He did not.

393 Q. At the time they refused to fill your orders, state whether or not you had on hand any large amount of bagging, and if so from whom had you obtained it?

A. My impression is I had a great deal of imported bagging on hand or bought to arrive.

Q. Do you know what percentage or proportion of the ties made this season approximately were manufactured by the Carnegie Steel Company and sold by Warren, Jones & Gratz? I mean, what percentage or proportion of ties manufactured in this country?

A. 1917?

Q. Yes.

A. I think about 90 per cent.

Q. What about the Atlanta and Birmingham Concerns? Are they small concerns or large concerns?

A. This year I do not think the Atlanta concern has made the usual number of ties they generally do.

Q. What do they generally make?

A. I do not know the quantity.

Q. Is the Birmingham a large concern or a small concern?

A. It is not a large concern.

394 Q. Would you say that both of them together this year would manufacture as much as half a million bundles of ties?

Mr. BIGGS. I submit he has stated he does not know how much was made by the Atlanta concern.

The WITNESS. I could not tell.

By Mr. ROBERTS:

Q. What other concerns in this country manufacture ties, besides the Carnegie Steel Company, the Atlanta Steel Company, and Connors-Weyman & Company?

A. The Pittsburgh Steel Company.
Q. Did they manufacture any this year?
A. I think they did.
Q. Did you ever make any efforts to buy any from them?
A. I did.
Q. Did you have any success?
A. None.
Q. What did they say?
A. They said they were going to roll a small amount of ties this year, and they would proportion it amongst the people who bought other of their products, and as I did not buy any nails or wire fencing, I could not get any ties.
Q. Did Warren, Jones & Gratz tell you at any time why they uld not sell you ties?
A. I never had any correspondence with Warren, Jones & Gratz the subject.
Q. Did either of the Elmers explain to you why your orders would be filled for ties—when they proposed to guarantee your orders?
A. The reason they could not fill my orders was St. Louis would approve them.
Q. Where did you secure your supply of ties each year—how did get them?
A. The Connors-Weyman Steel Company, M. M. Graves & Company, incorporated, of Houston; McMillan & Harrison, Mobile; nors-Weyman Steel Company, W. F. Daly & Company, of Waco, xas——
Q. Any others that you can recall?
A. Not that I can recollect.
Q. Mr. McMillan, how much, now, did the supply of ties that you ught this year cost you in excess of the amount that you would have had to pay for them if you could buy them at the quoted prices, delivered in New Orleans, like other dealers here secured them from Warren, Jones & Gratz?
A. $1,590.
Q. That they cost you in excess of the regular market price?
A. Yes.
Q. What about the freight rates from here to Pittsburgh as compared to the freight rates from New Orleans to Atlanta, for instance, Birmingham?
A. The freight rates per bundles charged by the mill to New Orleans are the same from any of the points named to New Orleans.
Q. They quote ties f. o. b. Pittsburgh, do they not, Mr. McMillan?
A. All the mills do, and then the arbitrary freight rate of 13 cents bundle applies, no matter whether they ship from Pittsburgh, Birmingham, or Atlanta.
Q. Then, why is it that you can not buy them just as cheaply in mingham or Atlanta as you could buy them from Warren, Jones ratz—that is what I want to understand? I just want the Commission to understand that point. You had to pay largely in excess

of the price that you would have to pay if you had got them
397 from Warren, Jones & Gratz, did you not?

A. I could not find anybody to sell me at the price Warren, Jones & Gratz sold ties at upon the opening of the market. That is why I had to pay more in order to get ties to match out the bagging I had.

Q. The Atlanta or the Birmingham concern would not sell you the amount you wanted at the Warren, Jones & Gratz prices?

A. The Atlanta concern would not sell me at all, and the Birmingham concern would not sell me only a limited quantity, and that at 4 cents a bundle higher than the opening price of the Carnegie Steel Company.

Q. Those you bought from Graves and others—those cost you more than those you bought from Birmingham?

A. Right—they did; yes, sir.

Q. At the opening of the season, this year, did you have on hand enough bagging to supply your trade for the year, or did you have to buy additional bagging?

A. I bought additional bagging. I did not carry over a sufficient amount for this season's trade.

Q. Have you dealt very largely at any time in the sugar-bagging cloth?

398 A. I do not handle it at all.

Q. Is it a fact, Mr. McMillan, that points on the Mississippi River enjoy a very low rate of freight from Pittsburgh?

A. They do.

Q. On all commodities, especially on this line of goods—cotton ties?

A. Bagging and ties.

Q. By barge lots, do you know what that rate of freight is?

A. No ties have been received here by barge, as far as I know of, for five or six years.

Q. Formerly they delivered them here in barges, didn't they?

A. Yes, sir.

Q. Isn't it a fact that on account of the water transportation, that these points have, that they get lower rates of freight than cities in the interior, as a rule?

A. Yes, sir.

Q. That being true, is it not also true that you could buy ties from a point on the river, like Pittsburgh—that you could buy them
399 more advantageously than you could buy them from a city in the interior, like you did this year?

A. The freight rate, as charged by the railroads from Birmingham to New Orleans, is about as cheap as the water rate would be from Pittsburgh to New Orleans.

Q. Then it was not on account of the freight so much that you were unable to buy them in Birmingham and Atlanta, as Pittsburgh—it is not so much on account of the freight rate?

A. It is not a question of the freight rate at all.

Q. They would not sell you as cheaply?

A. Atlanta would not sell at all and Birmingham only a limited amount—a limited quantity.

Q. Do you know anything about any agreement or any understanding between the different manufacturers of cotton ties as to how much they would manufacture each year?

A. I do not.

Mr. ROBERTS. You may question, Mr. Biggs.

Cross-examination by Mr. BIGGS:

Q. Mr. McMillan, I understand you to say that these negotiations that you had in these years were with either the firm of O. Elmer & Company, or C. O. Elmer & Company in regard to the purchase of bagging and ties, but you did not have any negotiations direct with Warren, Jones & Gratz about them?

400

A. Correct.

Q. You never took it up with them direct at any time?

A. I did not.

Q. You know that they do business with and sell people other than Elmer &Company and through Elmer & Company, in New Orleans—people like Mente & Company, and other firms? I do not state that as a fact. I ask if you know?

A. My understanding is that the office of either O. Elmer & Company or C. O. Elmer handles the business here for Warren, Jones & Gratz.

Q. That is your understanding. You do not know, of course, what definite relations they have had, except that is your impression in the trade. You never tried to buy direct from Warren, Jones & Gratz these three years you have told us about?

401

A. No, sir.

Q. Now, you stated to Mr. Roberts the reason—the only reason—assigned you by Mr. Elmer was that the St. Louis office did not approve. Don't you remember, or do you remember, that in 1917, around about May 24, that Mr. Elmer called you up on the telephone and read you a letter he received on that subject from Warren, Jones & Gratz? Do you remember that occasion?

A. That was in answer to the letter I asked him to write them.

Q. Presumably so.

A. I think so.

Q. I hand you the letter and ask if you recognize that as being the letter which was read to you by Mr. Elmer at that time? I hand the witness a letter dated May 24, or a copy of a letter May 24, 1917.

A. I never saw this letter, nor have I any recollection of having it read to me over the phone.

Q. You do remember, though, that he did read a letter to you over the phone?

A. I remember that Mr. Elmer said he had received a letter and told me that St. Louis was unable to sell us the ties.

402

Q. I thought you said a moment ago that you did remember he read to you over the phone a letter?

A. I do not recollect that.

Q. You do not recollect his having read you any letter?

A. I do not recollect having testified to what you stated I did.

Q. I may be mistaken. It is my impression. I will ask you again, Do you remember Mr. Elmer reading to you, about this time, any letter over the telephone?

A. I do not remember his reading me a letter. He told me about what the contents of the letter in question were.

Q. You do not remember this as being done?

A. I do not.

Q. You say you do not remember his reading this letter to you over the telephone?

A. I have no recollection of having Mr. Elmer read that particular letter to me over the telephone.

Q. I have handed the witness a letter and show him a copy
403 of the letter of May 24, 1917, addressed to Charles O. Elmer & Company, of New Orleans, and signed "Warren, Jones & Gratz."

What is the volume of your business—the average yearly business—Mr. McMillan, in bagging and ties?

A. It varies from year to year very considerably. This year, due to the war, it has been less than previous years, because we have not been able to import goods in the same volume as we did prior to the outbreak of the war.

Q. Can you give us an idea of what it has been since 1915—the average, about? I do not want to hold you down to definite figures, but about how much bagging and about how many ties.

A. I should judge about two and a half million yards of bagging and about 50,000 or 60,000 bundles of ties during some of these years.

Q. Is not that about your average business for these three years?

A. Approximately.

Q. This bagging—two and a half million yards of bagging—was that principally—what was the principal bagging that you handled during these years?

404 A. Calcutta make.

Q. Since 1915, 1916, and 1917?

A. Yes, sir.

Q. That is foreign bagging?

A. Yes, sir.

Q. Did you handle—what proportion of your bagging was made by the Ludlow Manufacturing Associates?

A. A small proportion.

Q. How many ties, if you know, were made by the Connors-Weyman Company—the average yearly amount—how much do they manufacture?

A. I do not know.

Q. How many were manufactured by the Pittsburgh Steel Company?

A. I do not know.

Q. How many are manufactured by the Atlantic Steel Company, of Atlanta, Georgia?

A. I do not know.

Q. How many are manufactured by the Sharon Steel Company?

A. I do not think they have made any for the past few years.

405 Q. If you do not know how many ties these various manufacturers have manufactured in the last few years, will you please explain how you arrive at your statement to the effect that you think the Carnegie Steel Company manufactures 90 per cent?

A. I think I stated that it was my opinion that the Carnegie Steel Company manufactured about 90 per cent of the ties in 1917.

Q. I am speaking of 1917.

A. I arrived at that conclusion because the Pittsburgh people made so small a quantity; the Sharon people, I understood, made none, and the Atlantic Steel Company less than usual.

Q. I thought you said you did not know how many they made.

A. I do not state now I know how many they made.

Q. You stated to me you did not know how many were made by the Birmingham concern, the Atlantic Steel Company, or the Pittsburgh Steel Company in 1917, but still you are able to arrive at a figure of 90 per cent made by the Carnegie Steel Company. How do you get at that? I just want to get at the basis of your statement

406 when you say you think the Carnegie Steel Company made about 90 per cent.

A. I think I am entitled to form that opinion.

Q. I want to find upon what you base that opinion. Of course you have a right to have that opinion.

A. The volume of business that I think Warren, Jones & Gratz do.

Q. That you think they do—do you know how much they do?

A. I certainly do not.

Q. You imagine or think they do so much, and you are basing your opinion on that?

A. Yes, sir.

Q. That is all you know about it?

A. That is all.

Q. These conversations that you told us about that you had with O. Elmer & Company or C. O. Elmer in 1915, 1916, and 1917—you did not mean to state, did you, here, that those times you gave them orders for bagging and ties?

A. I never gave an order unless the stuff has been sold. I might tell them I would take a certain amount of stuff if I could get it.

407 Q. But on these occasions, you did not give the orders; you simply inquired whether or not you could buy them.

A. I made an effort.

Q. To buy?

A. Yes, sir.

Q. And they refused, so you say, or Mr. Elmer reported to you that the St. Louis office did not approve selling to you?

A. That is my understanding from Mr. Elmer.
Q. Did you carry over any stock of ties from 1915 to 1916?
A. I think I did.
Q. How many?
A. I do not remember.
Q. Will you give us an idea of about how much?
A. I could not without referring to my books.
Q. Well, was it 5,000 bundles or 50,000 bundles—which was it?
A. It was not as much as 50,000.
Q. You think it was more than 5,000?
A. I would have to consult my books.
408 Q. You did not look up or consult your books on that matter?
A. No, sir.
Q. Did you carry over any ties from 1915 to 1917?
A. I did.
Q. How many?
A. I think in the neighborhood of 10,000 bundles.
409 Q. Ten thousand bundles?
A. Yes, sir.
Q. Now, these ties that you bought, on which you have told Mr. Roberts that you had to pay for, buying from the Conners Wyman concern—was that in 1917 that you were talking about when you say it cost you $1,519 more?
A. Yes, sir.
Q. Now, you say it cost you more than the opening market price, as made by Warren, Jones & Gratz?
A. Yes, sir.
Q. Did you buy at the opening of the market the ties you did buy?
A. Just as soon as I could after the opening of the market.
Q. How long afterwards did you buy? Can you refresh your recollection by looking at any memorandum?
A. If you have no objection to my looking at a memorandum—
Mr. BIGGS. I have no objection.
Mr. ROBERTS. I have none.
The WITNESS. On May 17 and May 30——

By Mr. BIGGS:

Q. May 17 and May 30—that is 1917?
410 A. Yes, sir; May 30 and June 4.
Q. Those were the dates on which you bought your ties this year?
A. Yes.
Q. When did the market open, do you remember?
A. May 16th is my recollection.
Q. What proportion did you buy right away of the ties you bought this year?
A. The greater portion.
Q. You bought those from Connors-Weyman, did you?

A. Yes, sir; as soon as I could buy them.

Q. As I understand it, it was previously—was it previously to that you talked to Mr. Elmer to see if you could buy them from Warren, Jones & Gratz?

A. I did not try to buy them from Warren, Jones & Gratz until the market opened.

Q. May 16, the next day, you did buy them from Connors-Weyman?

A. Some.

Q. In the meantime, on that day, or very soon thereafter, did you try someone else?

411 A. Before the opening of the market I had it up with the Pittsburgh Steel Company, asking if we could have our usual proportion of ties.

Q. They gave the answer you quoted us before?

A. Yes, sir; and I knew when the market opened, I would not be able to get any from the Pittsburgh Steel Company.

Q. That is the only place you attempted to buy ties?

A. I tried to buy them from the Atlantic Steel Company.

Q. They refused?

A. They were not manufacturing them.

Q. Did you try to buy any ties from the Ludlow Manufacturing Association?

A. I have been buying bagging from the Ludlow Manufacturing Associates for years, but never, to my recollection, have I bought ties. They are not in the business, as far as I know.

Q. But don't you know they have sold ties?

A. I have never heard of their selling ties in the New Orleans market.

Q. You have never tried to buy ties from Ludlow?

A. No, sir; as far as I can recollect.

Q. You have been in the business here about thirty years?

412 A. About thirty years.

Q. Did you buy any ties manufactured by the Pittsburgh Steel Company in 1916?

A. I did.

Q. Through whom did you get those ties?

A. A Memphis man was the selling agent.

Q. What was his name?

A. I do not know, but it was done under the name of the Pittsburgh Steel Company.

Q. Did you get them from Flowers?

A. Yes, sir.

Q. Who were they?

A. Brokers in Vicksburg.

Q. How many bundles of ties did you buy in 1916?

A. I think about 15,000 bundles.

Q. Did you ever do any business with the Atlantic Steel Company in years gone by?

A. Yes, sir.
Q. When?
A. A number of years prior to 1915—1916 and 1917.
Q. And a number of years prior to that?
A. Yes, sir.
Q. How many years prior to that?
413 A. I could not tell positively.
Q. Can you tell us about how many?
A. About as long as they were engaged in making ties, I think.
Q. How long ago have you done business with the Atlantic Steel Company—that is what I am after—prior to this time?
A. About three years ago.
Q. About three years ago?
A. Yes, sir.
Q. Did you buy ties from them then?
A. Bought ties from them.
Q. Since then they have not quoted you?
A. Since then they have not quoted me.
Q. Do you know of any reason for that—why they should not quote you?
Mr. ROBERTS. I do not think that would be admissible.
The WITNESS. I do not mind answering it at all.
Mr. ROBERTS. I understand, Mr. McMillan, but it seems to me their connection with this business—the only reason why Mr. McMillan was permitted to testify about his failure to get ties from
414 them was just to show the general situation of the market and the difficulty of obtaining a supply of ties—for that purpose and for that purpose only we offered it. To go into any difficulty, if there has been any difficulty, with these parties, I do not think would be interesting nor material. However, if you insist, I will not object.
Mr. BIGGS. Your honor, if he asks if the Atlantic Steel Company refused to quote Mr. McMillan on ties we certainly are entitled to know the reasons. There may be other reasons.

By Mr. BIGGS:

Q. Did you understand my question?
The WITNESS. May I have the question read?
(The stenographer read the question as follows:
"Q. Do you know of any reason for that—why they should not quote you?")
A. I do not, as I know they declined to quote other bagging and tie people.
Q. Did you ever have any trouble with them over the business you did with them at the last time you did business with them?
415 A. Yes, sir; they defaulted on their contract which necessitated my suing them in Atlanta. I obtained a judgment and collected my money.
Q. Since then have they failed to quote you?

A. Yes, sir.

Q. Did you ever do business or deal with the firm of James Finley & Company in London and Calcutta?

A. I did not.

Q. Did you ever hear of them—did you ever do any business with them at any time?

A. James Finley & Company?

Q. Yes.

A. I have no recollection of having any business with them.

Q. Do you know of the firm of Finley & Muir?

A. I do not.

Q. Did you ever do any business with the Carnegie Steel Company in buying ties from them?

A. If I ever bought any ties from the Carnegie Steel Company the transaction dated back some years and I can not recall it. I have usually bought from their agents, Messrs. Warren, Jones & Gratz.

416 Q. You do not remember having any transaction direct with them in which you bought ties?

A. I do not recall any at the moment.

Q. Do you know the firm of M. M. Graves & Company—you know them, don't you? That was formerly Street & Graves, of Houston?

A. I do.

Q. You have had business transactions with them?

A. Many.

Q. Do you do business with them now?

A. I do.

Q. Now, you have been in business here about thirty years, Mr. McMillan?

A. Yes, sir.

Q. Have you always been in business under the firm name that you have given us here?

A. About twenty-five years I have been in business here under the firm name as given; prior to that I was in business with my father, in the firm of McMillan & Son.

Q. When was that firm dissolved?

A. Twenty-five or twenty-six years ago; somewhere in that neighborhood.

417 Q. That would make it about 1891 or 1892; is that about right?

A. I think so, approximately.

Q. And you succeeded that firm in business; that is, I mean you carried on the business after that in the name of C. Lee McMillan & Company?

A. I established the firm of C. Lee McMillan & Company after the McMillan & Son business had been wound up.

Q. That firm name formerly was what?

A. McMillan & Son.

Q. And you were the son in that McMillan & Son?

A. I was.

Q. That concern was wound up in court, was it not?

A. It made a cession of property.

Q. You had a failure and the property was turned into court and distributed among your creditors?

A. Right.

Q. You know, do you not, a concern called the American Manufacturing Company?

A. Yes, sir.

Q. And you know the concern of Warren, Jones & Gratz, or
418 Mr. Anderson Gratz, of that concern, is also and has been for many years an officer in the American Manufacturing Company?

A. I do.

Q. You also know that formerly it had a Mr. L. F. Jones, who was with the Warren, Jones & Gratz concern, who was also an officer in the American Bagging Company?

A. Yes, sir.

Q. At the time your firm failed it was indebted, was it not, to the American Manufacturing Company on account of business transactions that had taken place between you and that concern?

A. My recollection is that McMillan & Sons did not owe the American Manufacturing Company any money, but did owe Warren, Jones & Gratz. I think Warren, Jones & Gratz were the creditors, and not the American Manufacturing Company.

Q. You are not positive about that after this number of years, are you?

A. I am not. They were so closely associated that I might possibly be mistaken.

Q. What was the amount of that indebtedness, if you know?

A. Somewhere between three and five thousand dollars, I think.

419 Q. Now, do you remember that after this failure of your former firm in court, in which the American Manufacturing concern or Warren, Jones & Gratz, as to which you are not certain, had this claim, you went ahead and did business under the head or style of C. Lee McMillan & Company?

A. I did.

Q. And you then, for some years after that, did business with Warren, Jones & Gratz?

A. Frequently.

Q. In fact, most of your business was done with them, was it not, after you started out with your new firm—your business was done with Warren, Jones & Gratz?

A. A good portion of the business was done with Warren, Jones & Gratz after the new firm was established.

Q. And that was about 1892. And then you continued along and your business relations were friendly and you did a great deal of

business with Warren, Jones & Gratz up until about 1901—is not that true?

A. I do not recall any particular year that the business stopped.

Q. Well, in 1901—do you remember that they sued you here in that year at New Orleans in the Federal court on account of your indebtedness to you?

420 A. I do not recall the year, but I remember the suit.

Q. And do you remember that in that suit your defense was that their claim of some three to five thousand dollars was barred by what we call in law the statute of limitations?

A. I do.

Q. And is it not true that they contended it was not so barred by reason of the fact that in 1892 when you started in business with your new firm, that you had written a letter to them in which you stated that that account of theirs—three to five thousand dollars or whatever the amount was—would be good against you for ten years—do you remember that fact?

A. I remember writing a letter, the contents of which I do not know now.

Q. I will show you a copy of the letter and see if you can identify it as being the letter you wrote at that time. I will ask you if this is the letter——

NEW ORLEANS, *February 16, 1893.*

L. F. JONES, Esq.,

Treasurer, St. Louis, Mo.

DEAR SIR: In reply to your valued favor of the 4th, we

421 acknowledge our indebtedness to your company in our proceedings in court January '92. This acknowledgment will hold good for ten years from that time.

Yours, respectfully,

C. LEE MCMILLAN.

Do you remember that letter as having been written by you and as the one which afterwards figured in the suit which was brought against you by the American Manufacturing Company, No. 1094 in the Circuit Court of Appeals?

A. I think I wrote that letter.

Q. And along at the end of 19—November 30, 1900, just before the time of ten years ran out, they brought that suit against you in New Orleans on that indebtedness and you set up the statute of limitations and they claimed that the claim was not barred by the statute by reason of your having written that letter in which you said that the claim would hold good for ten years from that time, that being January, 1892—is that the fact?

A. Yes, sir.

Q. You defeated them and were successful in that lawsuit?

A. I did. I believe they carried it through two or three courts.

422 Q. And that indebtedness has never been paid by you to Warren, Jones & Gratz or to the American Manufacturing Company?

A. Never.

Q. You remember the character of the indebtedness—what it was for?

A. Goods purchased by McMillan & Son in the regular course of their business.

Q. Bagging and ties?

A. Yes, sir; bagging and ties.

Q. What did you mean when you wrote them this letter and said that would hold good for ten years? Did you mean you would pay that debt? I am asking you.

A. The letter stands for itself.

Q. It speaks for itself. When you wrote that letter you intended it to be a revival of that obligation in order to go ahead with them and do business—that was the purpose when you wrote that letter?

A. No, sir.

Q. Why did you write that letter—what was your reason for it?

A. My lawyer told me to write it.

Q. Your lawyer told you to write it?

423 A. Yes, sir.

Q. You wrote this letter under the direction of your lawyer?

A. Yes, sir.

Q. Did he frame the letter for you?

A. Very probably; when I go to a lawyer I generally let him do the writing. I do not do the writing.

Q. Your lawyer at that time was Mr. Hall?

A. No, sir; Mr. B. F. Sholdt.

Q. Is he alive?

A. Yes, sir.

Q. Under his direction, you wrote this letter to the Warren, Jones & Gratz concern at St. Louis, and your impression now is that he framed the letter for you to write?

A. That is my impression.

Q. Why did you go to your lawyer and have him write that letter?

A. I very often consult my lawyer about business matters.

Q. Did you have any other reason than that? You got a letter, evidently from Captain Jones, and you evidently went to your

424 lawyer to consult him about the kind of reply you should make?

A. Mr. Sholdt had handled the affairs of McMillan & Son in the court, and I thought it would be perhaps better to consult him before answering the letter.

Q. And you consulted him and he framed this reply of February 16, 1893?

A. That is my recollection.

Q. And is it not true that your lawyer advised you that that framed in that way, it would not revive that debt?

A. He did not discuss that with me.

Q. Didn't you think, when you wrote this letter to Captain Jones, in 1893, saying that this indebtedness would be good for ten years, that you would pay that in that time?

A. The letter stands for itself.

Q. You have never paid the debt. Do you think that has anything to do with Warren, Jones & Gratz' refusal to sell you goods?

A. Not a thing in the world, because they have sold me hundreds of thousands of dollars worth of ties and bagging since they sued me.

Q. Did you make any complaint to the Federal Trade Commission?

625 A. I did not, that I recall——

Q. Not that you recall?

A. Except that perhaps I, at the beginning of the season, wrote the Federal Trade Commission and stated that unless some provision was made for ties, there might be difficulty in baling the present crop.

Q. You wrote the Federal Trade Commission?

A. I think I did.

Q. When?

A. Very shortly after the opening of the market, when I saw the apparent difficulty in getting ties.

Mr. Biggs. You may take the witness.

Mr. Roberts. That is all, Mr. McMillan, unless the examiner would like to ask some questions.

The Examiner. No.

(The witness was thereupon excused.)

Paul Kling was called as a witness, and being first duly sworn by the examiner, testified as follows:

Direct examination by Mr. Thom:

Q. State your full name, please.

626 A. Paul Kling.

Q. Your residence?

A. This city.

Q. And your occupation?

A. Secretary H. & C. Newman (Ltd.), cotton factors.

Q. Where are they located?

A. 917 Gravier St., New Orleans.

Q. Mr. Kling, did you, in the year 1916, endeavor to buy any cotton ties from Warren, Jones & Gratz?

A. We——

Q. I will put it this way—or C. O. Elmer?

A. Yes.

Q. With whom did you have the conversation about that?

A. The matter came to me only after Mr. Oliver, our purchasing clerk, reported that Mr. Elmer——

Mr. Biggs. I object to what his purchasing clerk reported. It is clearly incompetent.

By Mr. THOM:

Q. The matter was subsequently taken up with you, was it?

A. Yes, sir.

Q. When was it taken up with you—what conditions did you find surrounding it?

Mr. BIGGS. Taken up by whom?

427 By Mr. THOM:

Q. Didn't you have any conversation with C. O. Elmer?

A. Yes, sir.

Q. Tell what that conversation was.

A. Mr Elmer reported that he could not fill an order for, I think it was, 5,000 bundle of ties which he had taken in the morning of the day in question, because Warren, Jones & Gratz declined to fill the order, because we had not purchased any bagging from them.

Q. Now, will you please state approximately the time in 1916?

A. May or June of 1916.

Q. Pursuant to that setback, did you make any further endeavors to get cotton ties?

A. Yes, sir.

Q. Did you communicate direct with Warren, Jones & Gratz?

A. Yes, sir.

Q. I hand you a telegram dated June 27, 1916, addressed to H. & C. Newman, New Orleans, from Warren, Jones & Gratz, and ask you if that telegram was received by your firm in due course?

A. Yes, sir.

428 Mr. THOM. I offer that in evidence and ask that it be marked as an exhibit.

(The telegram referred to was thereupon received in evidence and marked by the stenographer "Kling Exhibit No. 1," and the same is as follows:)

"Our supply ties limited; manufacturers say impossible increase output; we must use our limited supply to go with our bagging; we are offering all parties in this way, discriminating against none; therefore can not accept your order three thousand bundles."

By Mr. THOM:

Q. Now, Mr. Kling, were you subsequently able to get those ties without bagging?

A. We succeeded in buying 5,500 bundles of ties.

Q. From whom?

A. We bought, I believe it was, 3,000 bundles from C. Lee McMillan & Company. I believe the price was $1.50 per bundle.

Q. Was that a premium over and above the market price?

A. Yes, sir; I believe ties opened that year at $1.48 less four cents per bundle. That was the opening price. We bought them at $1.50 from C. Lee McMillan & Company.

429 Q. I hand you a letter dated May 30, 1917, from Warren, Jones & Gratz to H. & C. Newman (Ltd.) and ask if that letter was received in due course.

A. Yes, sir.

Q. I hand you a letter dated June 20, 1916, from Charles O. Elmer to H. & C. Newman (Ltd.) and ask if that letter was received in due course.

A. It was.

Q. I hand you a letter dated June 22, 1916, from Charles O. Elmer & Company to H. & C. Newman (Ltd.) and ask if that letter was received in due course.

A. It was.

Mr. THOM. I offer those in evidence and ask that they be marked as exhibits.

(The letters referred to were thereupon received in evidenc and marked by the stenographer "Kling Exhibits 2, 3, 4, and 5," respectivly, and the same are as follows:)

WARREN, JONES & GRATZ,
St. Louis, Mo., May 30, 1917.

Messrs. H. & C. NEWMAN (Ltd.),
New Orleans, Louisiana:

430 GENTLEMEN: Your letter of the 28th. All ties we sell for Carnegie Steel Company for shipment from the mill are basis Pittsburgh, plus freight per Carnegie Steel Company's freight list, and this freight list shows a rate of 13 cents per bundle from Pittsburgh to New Orleans.

Yours, very truly,

WARREN, JONES & GRATZ.

WARREN, JONES & GRATZ,
St. Louis, Mo., May 24th, 1917.

H. & C. NEWMAN (LTD.),
New Orleans, La. Louisiana.

GENTLEMEN: Your letter of the 22nd. Your contract with us for 5,000 bundles ties is basis $2.10 per bundle f. o. b. Pittsburg, plus freight per Carnegie Steel Company's freight list for 1917, 4 cents per bundle off, June basis. This freight list shows a rate from the mill to New Orleans of 13 cents per bundle. To this must be added 2 cents per bundle to cover expenses in New Orleans, making
431 our f. o. b. New Orleans price $2.23.

This was the price our Mr. Elmer invoiced you the 750 bundles delivered from stock, which, on investigation, you will find correct.

Yours, very truly,

WARREN, JONES & GRATZ.

CHARLES O. ELMER,
New Orleans, La., June 30, 1916.

H. & C. NEWMAN (Ltd.), *New Orleans.*

GENTLEMEN: Please note that the firm of O. Elmer & Co. has retired from the selling agency of the American Mfg. Co., and that I

now represent the American Mfg. Co. and Warren, Jones & Gratz here for the sale of sisal and manila rope, lath yarn, also bagging and ties.

I quote you today as follows:

Anchor sisal rope	10¾	cents per lb. basis.
" " " unoiled	11¾	cents per lb. basis.
Royal pure sisal	11¼	" " " "
" " " unoiled	12¼	" " " "
432 American best grade manila rope	18¼	cents per lb. basis.
Hardware grade	15¾	" " " "

F. o. b. New Orleans.

I shall anticipate a continuance of your valued patronage, and assure you that your orders will receive prompt and careful attention.

An order from you at an early date will be encouraging and helpful, and, I assure you, will be much appreciated.

Yours, very truly,

(Signed) CHARLES O. ELMER,
Sales Agent.

Please note change in address, and direct all letters to 312-314 Tchoupitoulas St.

" CHARLES O. ELMER,
New Orleans, June 22, 1916.

H. & C. NEWMAN & Co. (Ltd.),
917 Gravier Street, City.

GENTLEMEN: Please note that I have appointed sales agent
433 for the American Mfg. Co. and Warren, Jones & Gratz, and now represent these mills for the sale of bagging and ties, also rope and twine.

I trust that you will continue to favor me with your bagging and tie business, which will be handled exactly as it was handled in the past, except that I am now the sales agent. Of course, you will understand that I shall quote you mill prices and render mill invoices.

My mills have not named prices on bagging and ties yet, but just as soon as they name their prices, I shall quote you at once, and shall hope to receive your orders for contracts of both bagging and ties at opening of the market to cover your season's requirements.

I am at your service, so do not fail to call on me whenever you want information or quotations, and certainly when you want to purchase bagging and ties. I shall anticipate the favor of your patronage this year, and I assure you that your orders will be very valuable to me and will be fully appreciated.

Yours, very truly,

(Signed) CHARLES O. ELMER,
Sales Agent.

Please note change in address and direct all letters to me at #312-314 Tchoupitoulas St."

434 By Mr. THOM:

Q. That is the only experience you have had?

A. Yes, sir.

Mr. THOM. The witness is with you.

Cross-examination by Mr. BIGGS:

Q. Mr. Kling, your concern is what might be called a brokerage concern, is it not?

A. No, sir; a cotton factor concern and commission merchants.

Q. Cotton factors and commission merchants?

A. Yes, sir. We do a sort of banking business. We lend money to farmers to grow the crops and in the fall, after the cotton is harvested, they ship to us.

Q. And you sell that cotton?

A. Yes, sir.

Q. You aim, do you not, to handle bagging and ties to furnish the people you do business with?

A. Yes, sir; as an accommodation.

Q. How much business do you do in a year, on an average, in number of ties and in yards of bagging?

A. I think the last few years—the last two or three
435 years—about 150,000 to 200,000 yards of bagging and a corresponding number of ties.

Q. Enough ties to go with the bagging?

A. Yes, sir.

Q. Now, 5,000 bundles of ties would be just about enough to cover your requirements?

A. Let me see——

Q. It takes 3,000 to each 100,000 yards *yards* of bagging. You say you handled about——

A. Let me figure a moment. I should say about 4,000 it would take for 150,000 yards of bagging. There is about seven or eight yards of bagging to the bale.

Q. You were going to buy in 1917 about 5,000 bundles for your requirements?

A. Yes, sir.

Q. From whom did you buy eventually?

A. 3,000 from C. Lee McMillan & Company at $1.50 a bundle and 2,000 from Warren, Jones & Gratz at $1.48, and 500 bundles from P. P. Williams & Company at Vicksburg. I think the price was $1.45.

Q. That was in 1916?

A. Yes, sir.

436 Q. Where did you buy your ties?

A. Ties from—Warren, Jones & Gratz agreed to sell us 3,300 bundles of ties which we bought.

Q. You were able to get all you wanted this year?

A. Yes, sir.

Q. Didn't you buy 5,000 bundles of ties in 1917 from Warren, Jones & Gratz?

A. We may have done so, but I do not remember, and I referred to a copy of the contract that I had under date of January 29, 1917. Let me explain that I received a subpoena duces tecum this morning and I got into the office at 8.30 and I gathered up hurriedly just what I could find without searching carefully. There may have been more than these.

Q. Is it not true that on May 21, 1917, you made a contract and purchased from Warren, Jones & Gratz 5,000 bundles of standard cotton ties alone, without buying any bagging? I will hand you a paper to refresh your memory about that, Mr. Kling.

A. If this is a copy of the original (indicating letter handed to witness) signed by E. H. March, vice president and treasurer of H. & C. Newman, Ltd., we did buy 5,000 bundles.

Q. Did you buy any from P. P. Williams & Company of
437 Vicksburg this year, 1917?

A. I think we did buy a small amount, probably some 60-pound ties. I do not remember.

Q. Didn't you buy 500 bundles of 45-pound and several hundred bundles of 60-pound ties from P. P. Williams & Company this year?

A. I do not remember without referring to the records.

Q. It is quite likely you did, is it not?

A. Let me explain that it was only in 1916 that I had charge of that matter, due to the absence of Mr. C. H. March, who was away on a vacation.

Q. You did not have charge this year?

A. No, sir.

Q. In 1916, he was away?

A. Yes, sir; but I was in exclusive charge.

Q. Did you buy any pieced ties or second-hand ties in 1916 or 1917?

A. We bought quite freely in 1917. I do not remember if any were bought in 1917, without searching the records, because I did not have charge of that branch of the office.

Mr. BIGGS. That is all.

Mr. THOM. That is all.

(The witness was thereupon excused.)

438 Mr. ROBERTS. If the examiner please, this concludes our testimony as far as this hearing is concerned, and it is not absolutely that we will have additional hearings, but it is our purpose to have addtional hearings, and, of course, we will give ample notice of the time and place.

Later—I do not know just when—we expect to have an additional hearing or hearings, and I am not able to say I am through at this time.

The EXAMINER. Very well, the hearings are adjourned, subject to further notice.

(Whereupon, at 12.45 o'clock p. m., an adjournment was taken subject to further notice.)

439 FEDERAL TRADE COMMISSION
vs.
WARREN, JONES AND GRATZ.
Atlanta, Georgia, January 15, 1918.

440 Before the Federal Trade Commission.

FEDERAL TRADE COMMISSION,
vs.
WARREN, JONES & GRATZ ET AL. } Docket No. 12.

UNITED STATES POST OFFICE BUILDING,
Atlanta, Georgia, January 15, 1918.

The above entitled matter came on for hearing, on notice, before Special Attorney George McCorkle, sitting as examiner.

Present: Special Attorneys W. T. Roberts and Alfred P. Thom, jr., on behalf of the Federal Trade Commission.

Present also: Davis Biggs, Esq., appearing for and on behalf of Anderson Gratz, Benjamin Gratz; also for Charles O. Elmer, one of the respondents.

PROCEEDINGS.

Pursuant to notice heretofore given, the following testimony was taken in the above-styled proceedings:

The EXAMINER. We will proceed with the examination of Mr. Gregg.

441 ROBERT GREGG, called as a witness, having been first duly sworn, testified as follows:

Direct examination by Mr. ROBERTS:

Q. Mr. Gregg, are you connected with the Atlantic Steel Company?.

A. Yes, sir.

Q. In what capacity?

A. Secretary and treasurer.

Q. How long have you held that position?

A. Since the date of incorporation, December 7, 1915.

Q. Prior to that time were you connected with the steel business?

A. It was formerly the Atlanta Steel Company. At that time I was secretary.

Q. And then in 1915 the name was changed, it was reincorporated?

A. Yes, sir; as the Atlantic Steel Company.

Q. And have you been secretary and treasurer of it since that period?

A. Yes, sir.

Q. Who is the president now?

A. Thomas K. Glenn.

Q. Can you recall the names of the directors?

442 Q. At the present time?

Q. Yes.

A. Yes, sir.

Q. Who are they?

A. J. B. Campbell, S. C. Dobbs, Thomas K. Glenn, John N. Goddard, James Embrey of New York City, John E. Murphy, J. Carrol Payne, Charles A. Wickersham, Ernest Woodruff, and Robert W. Woodruff. That should be ten men.

Q. What kind of steel good does your concern manufacture principally?

A. Do you want the finished products?

Q. Yes; just name a few of the finished products that you make.

A. We make wire nails, woven wire fence, barbed wire, reinforced concrete bars, steel hoops, steel cotton ties and semifinished products, billets, wire rods, and spring wire or market wire.

The EXAMINER. Col. Roberts, it is understood, I suppose, but I believe it would be a good idea to put in there your head officers in the city of Atlanta.

By Mr. ROBERTS:

Q. The general offices of the company are in Atlanta, are they not?

A. The operating officers are in Atlanta; yes, sir. The
443 corporation is incorporated under the laws of the State of Deleware, hence we have to maintain an office there, but the operations of the company are controlled from the Atlanta office.

Q. Does Mr. Glenn stay in the Atlanta office?

A. Yes, sir.

Q. But you maintain an office in Deleware to conform to some Deleware law, I suppose, because you are inforporated in that State?

A. That is correct.

Q. You spoke about manufacturing cotton ties. Have you been engaged in the manufacture of cotton ties from 1915 up to this time?

A. Yes, sir.

Q. Mr. Gregg, if you can do so, I will ask you to give the amount of cotton ties manufactured by your company each year, for 1915, 1916, and 1917.

A. That is the total output of that mill, regardless of the company?

Q. Yes, sir. This new company was organized in 1915?

A. Yes, sir. Part of the production for 1915 was under the name of the old company and part under the name of the new company.

Q. That does not make any difference. I will ask you just to state what the output was from that mill, regardless of when it cha'ged, for those three years.

A. Production for the year 1915 was 437,383 bundles; production
for 1916 was 368,990 bundles, and production for 1917 was
444 334,212 bundles. That is the normal record that we carry of our production. I should add that in the year of 1915 they made a slight adjustment and in the year 1916 we made a slight adjust-

ment, due to an error in counting the ties as they were produced. That developed at the end of the year when we took an actual inventory of the ties left on hand. In the year 1915 that adjustment amounted to 1,695 bundles.

Q. That was a correction of your bookkeeping?

A. Yes, sir; and in the year 1916 the adjustment amounted to 287 bundles. There is no adjustment in the year of 1917.

Q. Are you able to give the prices that prevailed that you received for cotton ties in those years?

A. The average for the year or the average per month?

Q. I mean the average prices received by your company for cotton ties.

A. I don't know that I can give it to you offhand. I can compute it.

Q. I wanted to show, as nearly as possible, the advance in prices from 1915 up to the past season. Give it approximately.

A. I won't give you this under oath, because I do not recall. I will give it approximately.

The EXAMINER. It all has to be under oath.

A. I won't answer the question because I haven't those figures.

445 Mr. ROBERTS. While he is testifying under oath he can state that he gives it approximately; gives his best recollection. That is all right.

Q. The fact you are under oath does not make any difference about that, because you have qualified it that way.

A. The opening prices of ties in 1916, I think, was $1.35 per bundle, Pittsburg; the price in the year 1917, $2.10 per bundle, Pittsburg.

Q. F. o. b. Pittsburg?

A. Yes, sir. The 1915 price I have not got. I can not give it to you for that year. The figures I have before me are not sufficient to give it to you. As nearly as I can recollect, though, it was 85 cents. You see the books were entirely changed under the new concern, and those old books are not immediately in my possession. However, I can produce them within a reasonable time. But, as I say, the price in 1915 was approximately 85 cents per bundle, Pittsburg.

Q. You gave the opening price. Did those prices, as well as you remember—were they maintained throughout the season about the same?

A. As a basing price they were, so far as I remember.

Q. You do not think there was very much decline or very much advance during the season from the opening price?

A. I can answer that specifically for 1916 and 1917, but
446 I can not for 1915. I find that the ties sold during the last month of 1915 were approximately at the base price, so there could have been only a very slight variation during that year. The year of 1916 there was a very slight variation from the base price.

In the year of 1917 there was practically no variation so far as our company was concerned.

Q. Does your company sell the entire output to jobbers, your entire output of ties; do you deal with jobbers, wholesale merchants, and concerns like that?

A. I am not in the sales department, sir, and I can not answer your question completely. In a general way we sell through brokers to dealers.

Q. You have no connection with the bagging trade, I suppose?

A. No, sir.

Q. You do not handle cotton bags or deal in bagging at all?

A. Not at all.

Q. Have you marketed your entire output of ties for the past year, or are you carrying over?

A. We carried forward in January 1, 1918, 9,000 bundles of ties.

Q. That is very few I would say.

A. Yes, sir.

Q. There will still be some demand, I suppose, for ties yet?

A. I do not know.

Q. Do you make what is called the Arrow ties?

447 A. Yes, sir.

Q. Are they precisely like those manufactured by the Carnegie Steel Company?

A. Practically the same.

Q. Do they sell at the same price?

A. Yes, sir; sell at the same basing price.

Q. I want to ask you how that opening price is made. Who makes that opening price? You say they open at f. o. b. Pittsburg so much.

A. I really do not know, sir.

Q. Who do you get the information from as to what the opening price on cotton ties is?

A. I, personally?

Q. Your company.

A. That I do not know.

Q. The price is based on the opening price f. o. b. Pittsburg, and then is it true that your price would be the freight from Pittsburg to Atlanta plus that price? Is that the way you figure it?

A. If the ties were delivered in Atlanta; yes, sir.

The EXAMINER. And the ties made in Atlanta, Colonel.

By Mr. ROBERTS:

Q. The ties made in Atlanta are priced in Atlanta, the price
448 being f. o. b. Pittsburg plus the freight rate on ties from Pittsburg to Atlanta; is that true?

A. Yes, sir.

Q. What territory do you sell your ties in; what States is your trade confined to?

A. Principally in South Carolina, Georgia, Alabama, and Texas; some in Tennessee.

Q. What percentage of your product would you say is sold in Texas?

A. I can not answer; I do not know.

Q. Is it not true that you sell very little in Texas—a very small amount?

A. I will give you an approximate figure in this way. We sell to a concern at Chickasaw, Oklahoma, who have the majority of their ties shipped into Texas direct from our plant, and I judge that 25 per cent of our output goes in that direction. That figure is subject to some revision, but that is approximately correct.

Q. You think that was true the last season, 1917?

A. Yes, sir.

Q. What about the season of 1916?

A. I think it is equally true.

Q. And equally true in 1915?

449 A. I am not sure on that point. I don't recall.

Q. And the other part of your product is sold in this State?

A. Yes, sir; and the neighboring territory.

Q. Largely in Georgia, is it?

A. We try to sell as much in Georgia as the trade will take, because that is the most advantageous point for us.

Q. Is there any other concern in Georgia that manufactures new ties?

A. I think not.

Q. Do you know of any in South Carolina or North Carolina?

A. I do not know of any.

Q. Do you know of one in Alabama?

A. Yes, sir.

Q. And so far as you know, Connors, Weyman & Company in Birmingham and your company are the only manufacturers of cotton ties in the South Atlantic?

A. Of new cotton ties they are, as far as I know.

Q. Do you know whether or not second-hand ties are largely used in this territory?

A. I do not know how largely they are used there. Of course, some of them are used.

450 Q. You could not give any estimate about what proportion of the cotton is wrapped in second-hand ties?

A. No, sir.

Q. Is it true that you have sometimes declined orders in the States of Louisiana and Mississippi on the ground that freight rates were somewhat against you and you could not make it profitable to ship them out there?

A. Concretely that is the sale department proposition, which I am not familiar with, and I judge that could be true.

Q. Are you prepared to state how freight rates from here to a point like New Orleans compared with Pittsburg, compare with freight rates from St. Louis to Pittsburg?

A. No, sir; I have no freight rating with me. I do not know.

Q. Do you know it to be a fact that you did, during last season, decline to fill a great many orders in those States, Mississippi Valley States?

A. I do not know.

Q. There was a very large demand for cotton ties last season; they seemed to be very scarce, did they not?

A. The demand fell off so far as we were concerned. You will note that our production was the smallest for three years.

451 Q. The crop in this State was rather small, the cotton crop was rather under normal, was it not?

A. I do not know, but I judge that it was.

Cross-examination by Mr. Bioos:

Q. You are not in the selling end of the business, as I understand it?

A. Not at all, sir.

Q. What are your duties as secretary and treasurer?

A. I am in charge of the accounting department.

Q. Can you give us an idea of the total ties that are used on the crop in these years, Mr. Gregg; that is, both new and second hand, I mean?

A. No; I can not.

Q. Are you justified about the price of these various years of cotton ties, is that the price that you got for the ties that you sold?

A. I stated that was the basing price.

Q. The basing price?

A. Yes, sir; we base our price on that price.

Q. You sold your ties for that price; that is, took that
452 as a basis?

A. Yes, sir.

Q. Of course it would depend upon where they were delivered?

A. Yes.

Q. You got that price, based upon that, or a better price for your ties in those three years?

A. Our price happened to average above that, because of the freight absorbtion.

Q. In fact you got a better price than that for the whole three years?

A. Naturally; there was a freight absorbtion to be added.

Q. Are you able to tell us the manner in which you market your product. I understood from Mr. Roberts that perhaps you were not. In other words, do you sell your ties through particular brokers or to particular customers you have, or do you sell them to all comers?

A. As I stated, I am not thoroughly competent to answer that question, sir.

Q. Of course you try to market your ties, I presume, as much as you can close to Atlanta and this immediate vicinity?

A. Yes, sir.

453 Q. In your business are you familiar with the condition of the steel market, Mr. Gregg?

A. In a general way.

Q. During these years, and especially the years 1916 and 1917, I noticed in your figures you gave that your concern did not make the number of ties that they made in 1915.

A. That is correct.

Q. What was that due to?

A. Why, offhand I should say that it was due to the lack of demand. As a matter of fact the cotton ginners reports showed that the number of bales of gin is about in proportion to our production.

Q. That is the cotton crop was not so large?

A. That is what I infer; yes, sir.

Q. Did your mill find it more profitable to make your other steel products during these particular years than to make cotton ties?

A. Well, when you can sell one product and you can not another you naturally make the product that you can sell. I might say, however, the price on the other commodities which we rolled in that particular mill is approximately the same as the price of cotton ties.

454 Q. There has been a great demand for the other products you have been making outside of the steel ties?

A. For the last two years there has been a tremendous demand; yes, sir.

Q. And the ties your mills made were all you could make, isn't that true, during those two years?

A. The mill has operated to its full capacity.

Q. You have nothing to do with the bagging industry, as I understand, you know nothing about the way the bagging business is done?

A. No, sir; I know absolutely nothing about it. We are not concerned in that.

Q. Did your concern sell any ties, do you know, to the Ludlow Manufacturing Associates of Boston during these years?

A. We did sell some last year; I should say the current year of 1917; yes, sir.

Q. Did you in 1916?

A. I do not remember whether we did or not.

Q. During those years, 1915, '16, and '17, I understand you to tell Mr. Roberts that you sold perhaps 25 per cent of your product to the Chickasaw Cotton Oil Company of Oklahoma?

A. I think that is about correct.

455 Q. And most of those ties were delivered in Texas?

A. So far as I remember.

Q. Is that the concern you sold them to, the Chickasaw Cotton Oil Company?

A. That is correct.

Q. Can you tell us what price you received for the ties you sold the Ludlow Manufacturing Associates?

A. It was the market price, whatever that was. I do not remember.

Q. That is true as to the ties you sold the Chickasaw Cotton Oil Company?

A. That is true as to all of our customers.

Q. Is it not a fact that during these years some of your ties were sold to parties in New Orleans?

A. I do not remember.

Q. You would not say that is not true?

A. I would not say either way. I don't remember.

Q. You had no trouble during these years marketing the ties that you manufactured; there was a demand for the ties, all the ties that you made?

A. Well, we made the production meet the demand. That is proven by the number of ties carried over.

456 Q. Of course, the beginning of the year you could not always tell what the demand was going to be?

A. No.

Q. It would depend upon the cotton crop?

A. But your operating conditions can be controlled very quickly during the summer months.

Q. Do you know anything about any efforts being made by either the Carnegie Steel Company or Warren, Jones & Gratz, of St. Louis, to get you to manufacture more cotton ties during 1916 and 1917?

A. That would be a matter they would probably take through the chief executive of the company, if it took place at all, sir. I do not know.

Q. Mr. Glenn?

A. Yes, sir.

Q. During these years there has been a tremendous demand for your other steel product, has there not?

A. Particularly the last two years.

Q. And you made such cotton ties during that time that you thought there would be a demand for, depending upon the size of the cotton crops and the territory which you aimed to cover?

A. Yes, sir.

457 Q. You made no effort to spread out and increase your cotton-tie business during this time, did you?

A. No.

Q. You are not able to tell us anything, I presume, in the trade as to the manner in which Warren, Jones & Gratz marketed their cotton ties, or the manner in which they conduct their business?

A. No, sir; I do not know.

Q. The advance in the price of cotton ties depends, of course, upon the steel market?

A. Yes, sir.

A. And the price of steel having advanced materially over 1915, of course, the cotton ties were worth more money?

A. Yes, sir.

Q. Had to be sold for more money?

A. Yes, sir.

Mr. ROBERTS. I do not believe I have anything else to ask him. Would your honor like to ask him any questions?

By the EXAMINER:

Q. Who is the gentleman in your company that has to do with fixing the prices, or naming your prices?

458 A. The general manager of sales?

Q. What is his name?

A. Charles F. Stone.

The EXAMINER. That is all I want to ask you.

Mr. ROBERTS. That is all, Mr. Gregg.

(The witness was excused.)

(Recess was thereupon taken to await appearance of witness S. S. Paul.)

(The hearing was resumed at 2.30 o'clock p. m., whereupon:)

S. S. PAUL, called as a witness, having been first duly sworn, testified as follows:

Direct examination by Mr. ROBERTS:

Q. Your name is S. S. Paul, I believe?

A. Yes, sir.

Q. Where do you live, Mr. Paul?

A. Birmingham, Alabama.

Q. What connection, if any, have you with the firm of Connors-Weyman Steel Company?

460 A. I am secretary.

Q. What business are they engaged in?

A. Manufacturers of steel hoops and cotton ties.

Q. Do they manufacture any other steel products besides those?

A. No, sir; they do not.

Q. Where is their factory located?

A. Helena, Alabama.

Q. How far is that from Birmingham?

A. About 17 miles.

Q. Where are the general offices of the company?

A. In the Brown Marks Building, Birmingham.

Q. And you are secretary and treasurer of the company?

A. No, sir; only secretary.

Q. And keep your office in the general office there?

A. Yes, sir.

Q. Who is president of that Connors-Weyman Steel Company?

A. George W. Connors.

Q. Is it an incorporated company?

A. Yes, sir.

Q. Who are the other officers of the company?

A. Mr. Connors is president; S. F. Weyman, vice president; W. M. Hoke is secretary and vice president; and I, S. S. Paul, secretary and manager of sales.

Q. How long have you been connected with that firm?
A. Since June 1st of 1917.
Q. You held the position that you now hold at that time?
A. I was appointed secretary on June 15th, I believe, 1917.
Q. Did you have any connection with them before that?
A. I held some stock in the company before that.
Q. How long has this firm been engaged in the manufacture of cotton ties?
A. I should say about nine years.
Q. I should like, if you can from the records which you have, testify what the output of Connors-Weyman factory has been of cotton ties for the years 1915, 1916, and 1917.
A. In 1915 we manufactured and sold 203,929 bundles; in 1916 115,164 bundles; and in 1917, 72,608 bundles.
Q. Is there any other concern in Birmingham that manufactures cotton ties?
A. No, sir.
461 Q. Do you know of any other concern in Alabama that manufactures cotton ties?
A. No, sir; there is not.
Q. There is no other?
A. No, sir.
Q. Why did your company reduce its production of cotton ties, Mr. Paul?
A. There was not a demand for them, sir; that is, I mean 1917 as compared with 1916 and 1915 we did not have the demand for them. We offered to make 200,000 if they were needed, and we had contracts for a good many more cotton ties than we delivered. We had to cancel those balances.
Q. Why were they not delivered? The people did not want them or you did not make them?
A. We were ready to make them, but they were not required.
Q. Was that on account of a short cotton crop?
A. Yes, sir; on account of a short cotton crop and also on account of the number of rebundled ties that were made all over the territory.
Q. Old ties?
A. Yes, sir.
462 Q. Have you any means of knowing to what extent those secondhand ties are used in that territory?
A. Not accurately; but I should judge that in 1917 there was possibly three-fourths of a million, maybe more, bundles used in the United States.
Mr. BIGGS. Speaking of secondhand ties?
A. That is, the secondhand, rebundled ties.

By Mr. ROBERTS:

Q. You do not know whether those figures are accurate or not?
A. No, sir.
Q. That is your opinion?

A. That is merely my opinion.
Q. Have you made any investigation of the subject, or just in a neral way you have formed that opinion?
A. In a general way I have formed that opinion.
Q. In what territory does your company sell its product of cotton es?
A. Principally in the States of Alabama, Mississippi, Tennessee, d a portion of Georgia and a portion of Louisiana, and a very, very small percentage in Texas and Arkansas.
Q. State whether or not it is a fact that you turned down orders that you received last year from Louisiana, Vicksburg, ckson, Miss., and other points?
A. Not to my knowledge did we turn down any orders.
Q. Do you remember turning down an order from Rumble, Wentzle Company, at Natchez, and one from C. Lee McMillen Company, iring or writing that you could not fill their order?
A. I don't remember of it, sir. We did sell C. Lee McMillen & ompany cotton ties.
Q. When; in the past season?
A. Yes, sir; 1917.
Q. Do you remember how many you sold them?
A. I think it was 3,000 bundles. I am not quite positive.
Q. Has your company any connection with the Carnegie Steel Company or the United States Steel Corporation?
A. None whatever, sir.
Q. It is an independent company?
A. Yes, sir.
Q. I believe you are not engaged in the bagging trade; you have othing to do with bagging?
A. Nothing whatever, sir.
Q. What class of dealers do you sell the ties to generally?
A. To jobbers and brokers, and also through some wholesale roceries; you understand, they handle cotton ties and bagging.
Q. So you think the decreased production in the amount of ties ade by your company grew out of the fact that you did not have ny great demand for them last year?
A. Yes, sir; in our immediate territory, the States I have men-oned, with the exception, of course, of Texas; but we did not go nto Texas, with the exception of a very small quantity this year.
Q. Freight rates to Texas points are not really advantageous from irmingham, are they, Mr. Paul?
A. Well, we can make more out of cotton ties by selling them earer at home.
Q. How is that?
A. I mean on account of the freight rates.
Q. It grows out of the fact, does it not, that all cotton ties are riced f. o. b. Pittsburg, and whatever point they may be shipped om by your company the price you have to make it f. o. b. Pitts-

burg, plus the freight to Birmingham, plus the freight to the poi
when you ship them, is that not true?

465 A. Our prices are usually based on f. o. b. Pittsburg pl
the rate per bundle from Pittsburg to destination, and then
allow in our billing freight from Birmingham to the destinat
But that proceedings——

Q. You include that in the price you charge for the ties?

A. No, sir; we allow the freight from Birmingham to desti
tion. In other words, our price delivered at any point would be
Pittsburg price, plus the rate from Pittsburg.

Q. To Birmingham?

A. No, to whatever point it be. If Birmingham is the deliv
point it would be there; if Anniston or any other point it would
the same. That is the usual procedure. Last year and the ye
previous we have sold some ties at a higher price than Pittsbu
sometimes lower.

Q. How is it you can make more money on ties that you sell
the immediate vicinity of Birmingham than you could selling
Texas points?

A. Because freight from Birmingham to those points of deliv
would not be so much as from Birmingham to Texas common poi

Q. And in as much as you allow that freight and do
466 include it in the price charged you get a great deal more
of it than if you had to ship them so far, is that right?

A. Yes, sir.

Q. And for that reason isn't it true you usually decline ord
from Texas points?

A. If it is too far off and we see we are going to lose money by
we do decline to quote.

Q. The freight that would be charged for those ties, manuf
tured in Pittsburg, as I understand it, would be the price f. o.
Pittsburg, plus the freight from Pittsburg to the Texas point?

A. Yes.

Q. And that would be all?

A. Yes, sir.

Cross-examination by Mr. Biggs:

Q. Mr. Paul, the prices that you sold your ties at you say at ti
you got more money for them than the Pittsburg price?

A. We have at times.

Q. Was that in 1916 and 1917?

A. I do not know about that. I have been with the co
467 pany only since 1917.

Q. And I understand you to say the fact your producti
has been decreased is due to the lack of demand?

A. Yes, sir.

Q. Partly on account of shortage of the cotton crop, partly
account of the fact that second-hand ties have been manufacture

A. Yes, sir.

Q. In greater quantities. Do you know whether the production second-hand ties has increased in volume from year to year?

A. I could not say whether it has increased in volume from year year because I do not know very much about that. As I told you, only came to the company the first of June, but from the informa- which has been furnished me from time to time by people th whom I talked, I believe 1917 saw more rebundled ties than evious years.

Q. Of course the price of ties is based entirely upon the steel rket, isn't it, and the price of steel?

A. That is my understanding, sir.

Q. And the steel market having been high, the price of steel having gone up, of course ties went up?

A. That is my understanding.

Q. And in 1917 the price of ties being higher than usual, a great ny more second hand ties were sold to cover the crop?

A. As I understand, sir.

Q. Your business is making hoops, you say, steel hoops and cot- ties?

A. Yes, sir.

Q. There has been a big demand, has there for the last couple years for your product outside of the ties?

A. Yes, I should say so.

Q. Your mill has been busy all the time?

A. Yes, sir; I say all the time. We have had to close down sev- l times because of shortage of steel.

Q. Was it more profitable for you to run your mill on the other s that you manufacture than on the cotton ties during the last ple of years?

A. I don't know about the last couple of years.

Q. How about 1917?

A. Since June,—well, I expect that hoops were more profitable.

Q. You have not attempted to spread out, as I understand you to say, and do the business in other territories except this ritory you have named?

A. No, sir.

Q. You have not tried to go into Texas?

A. No, sir; not with cotton ties.

Q. You have not come over into Georgia?

A. Very little, sir.

Q. Do you sell your ties to particular customers that you have de built up and established with?

A. Yes, sir.

Q. And you are able usually to get rid of your supply through various brokers and jobbers?

A. Yes, sir.

Q. You aim in selling your ties to sell them to these particular people and cover their wants before you sell to Tom, Dick and Harry?

A. We do, absolutely, sir.

Q. In fact you run your business that way, do you not; you take care and try to know about how many ties each one of your customers is going to want and you aim to manufacture that many?

470 A. Yes, sir.

Q. And that is all you aim to do?

A. Absolutely; yes, sir.

Q. Do you know anything about efforts made by the Carnegie Steel Company or Warren, Jones & Gratz to induce your company to manufacture more ties than it was making?

A. If that question was ever raised it was raised with our president, Mr. Connors, though that I believe that ——

Mr. ROBERTS. We object to the witness stating what anybody said to him, if they did say anything.

Mr. BIGGS. We do not want what somebody said to him, that is true. Of course a great deal of testimony has necessarily been introduced of what he learned from his books and others at a time he was not connected with this corporation. They have not objected to that. I think he is giving the exact facts about it. I do not want his conversation with somebody else, though.

Q. State just what you know about it, Mr. Paul.

A. I do not know about it.

Q. During the time you do know about it, in the trade did you ever notice any effort on the part of Warren, Jones & Gratz to control the tie market or to advance prices above a fair point, based on the steel market?

471 A. No, sir.

Q. Do you know anything about ties being sold with bagging, and only with bagging, other than to fairly distribute the ties?

A. I do not.

Q. To stop speculation entirely?

A. I do not.

Q. In this year 1917, that is the year I understand you know about, did you observe in the trade any business methods practiced by Warren, Jones & Gratz or the Carnegie Steel Corporation in the sale of ties that were not in the interest of the whole trade, manufacturers, merchants, and consumers included?

A. No, sir.

Mr. ROBERTS. I do not think that is a proper question, your honor. It asks a conclusion necessarily as to whether it would be in the interest of the trade and the interest of the business. I think just the facts would be what ought to be brought out.

Mr. BIGGS. He is familiar with the trade, your honor. His opinion has been asked.

Mr. THOM. I should like to register as an additional objection that the statement of the witness goes to the question at issue, as to any practice they may have had was an unfair method of competition.

The EXAMINER. Yes, it is a pretty general question.

Mr. BIGGS. It has to be general, of course, your honor, if he knows anything they have done; he is familiar with the trade if he knows anything; he said he did not. Of course that part that asks whether or not it is in the interest of the whole trade, that is in the way of a conclusion. That is a part of the whole question, simply whether he knows any methods practiced.

The EXAMINER. You asked him of that general character.

Mr. BIGGS. No; I asked him if he is familiar with the trade and if he knows in the trade of any methods practiced by them that in any way would indicate in his mind anything they did was not in the interest of the trade.

Mr. ROBERTS. That is what we object to, because he is not the judge of what is in the interest of the trade. It is just the facts that he can testify to; it is not for him to say whether or not it is in the interest of the trade, or whether it is disreputable or unfair—just the facts.

Mr. BIGGS. He said he did not know the facts at all.

The EXAMINER. Then I think the question is not objectionable when you eliminate the part about the interest of the trade. He says he does not know anything about it; then that leaves it in the shape that Mr. Biggs would have it; then he asks if he knows they are doing anything now that would be unfair, overreaching or not in the interest of the trade, and he says he does not, so that leaves it in the position of him setting them up as models of correctness in the tie business. I do not think that is the model of the tie business.

Mr. BIGGS. It is the truth, sir.

The EXAMINER. Whether or not it is true, I do not think a witness can testify to it in that shape.

Mr. BIGGS. I put in the latter part of the question simply to indicate the kind of practices that he might conclude I meant by the question. I do not want him to pass upon the question at issue in this case, of course. He can testify, I think, in the trade, and he knows the business, knows the way they do the business, has met them in the trade; whether or not there is anything that they did, any unfair practice or any practice that was not in the interest of the business.

Mr. ROBERTS. That is what I object to, and I move to rule out that part of the answer that refers to that, and rule out that part of the question.

The EXAMINER. It is in the record and is objected to and the objection is noted. We will just leave it as it is.

By Mr. Biggs:

Q. Mr. Paul, did your concern, during these years, if you know, sell any of their product in cotton ties to the Ludlow Manufacturers Associates of Boston?

A. Not that I ever heard of, sir.

Q. Or to the Chickasaw Cotton Oil Company, of Oklahoma?

A. I do not know, sir.

Q. Have you looked over your books so you might be able to testify as to whether your books show those facts or not?

A. I have not been over our books, that is, for previous years, to know all of the customers they sold cotton tie to.

Q. You have examined your books, I presume, to find out the amount of the total product you manufactured each year?

A. Yes, sir; went over them last night.

Q. Can you give us the total number of ties, both new and old, that were used on the cotton crop of 1917?

A. No, sir.

475 Q. Do you know whether or not it is a fact, Mr. Paul, that a considerable number of ties that you sell to jobbers and merchants, and that sort of thing, jobbers and brokers, are held by these people for speculating purposes, carried over, for instance, from year to year and not used in fact on the cotton crop?

A. I don't think so, sir. That is, I don't think they are held for that purpose; not to my knowledge have I known it be done.

Q. Your knowledge extends, as I understand, just for the year 1917?

A. For 1917.

Q. Do you know whether or not any of the people that you did business with carried over ties from 1916 to 1917?

A. Not that I know of, sir. In fact I do not know, I should say.

Q. You do not know?

A. No.

Redirect examination by Mr. Roberts:

476 Q. Mr. Biggs asked you a question as to whether or not you sell your ties to the Ludlow Manufacturers Associates. Is it not a fact, Mr. Paul, that you do not know from whom your customers buy their bagging; you do not pay any attention that, do you?

A. No, sir; not since June I would know where they buy their bagging.

Q. You like to sell ties to people who deal in Ludlow's bagging or any other kinds of bagging—you make no inquiry about what bagging they use——

A. No, sir.

Q. In conjunction with your ties. And, as a matter of fact, you do not know what kind of bagging they use, do you?

A. No, sir.

Mr. Roberts. I think that is all we have here, your honor.

The EXAMINER. I should like to ask Mr. Paul a question about the price.

By the EXAMINER:

Q. You do not fix your price—you are not in the price-regulating department of your concern, are you, or how do you fix your price? How do you know what to charge for your ties?

477 A. Well, after the price of cotton ties is opened——

Q. Who opens?

A. So far as I know the Carnegie Steel Company opens the price.

Q. Then after the price is opened—what were you going to say?

A. Then, as I explained a while ago, our delivery prices generally are based upon the f. o. b. Pittsburg price, plus the rate of freight to the destinations required.

Q. You sell your ties generally about the same as the Carnegie price?

A. Yes, sir.

Q. And this concern in Atlanta the same thing?

A. I do not know their practice, but I imagine it would, of course, be the same thing.

Q. But you know their prices?

A. Yes, sir.

(Whereupon, at 3.15 o'clock p. m., an adjournment was taken, subject to further notice.)

478 FEDERAL TRADE
v.
WARREN, JONES & GRATZ } Docket 12.

Norfolk, Va., Jan. 19, 1918.

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480 Before the Federal Trade Commission.

FEDERAL TRADE COMMISSION
vs.
WARREN, JONES & GRATZ ET AL. } Docket No. 12.

UNITED STATES POST OFFICE BUILDING,
Norfolk, Virginia, January 19, 1918.

The above-entitled matter came on for hearing, on notice, before Special Attorney George McCorkle, sitting as examiner.

Present: Special Attorneys W. T. Roberts and Alfred P. Thom, jr., on behalf of the Federal Trade Commission.

Present also: Davis Biggs, Esq., appearing for and on behalf of Anderson Gratz, Benjamin Gratz; also for Charles O. Elmer, one of the respondents.

PROCEEDINGS.

Pursuant to notice heretofore given, the following testimony was taken in the above-styled proceedings:

481 Mr. THOM. I would suggest that as long as the witnesses, Mr. Gholson, Mr. Jenkins, and Mr. Margolius are here, that they be sworn by the examiner at this time.

(The above-named parties were thereupon sworn by the examiner.)

Whereupon W. P. GHOLSON was called as a witness and testified as follows:

Direct examination by Mr. THOM:

Q. Please state your residence.

A. Henderson, North Carolina.

Q. And your business?

A. I am a manufacturer of jute bagging.

Q. What concern are you connected with?

A. The Carolina Bagging Company.

Q. Will you please state how long you have been in that business?

A. Since 1908.

Q. What is your position in that company?

A. Secretary and sales manager.

482 Q. Have you experienced any difficulty in the years 1915, 1916, and 1917 in obtaining cotton ties for baling cotton?

A. Yes, sir.

Q. Did you make any efforts to get any cotton ties from Warren, Jones & Gratz?

A. No, sir; not directly but indirectly.

Mr. ROBERTS. We object to that. We do not understand what "indirectly" means.

The EXAMINER. Let us see what he says.

By Mr. THOM:

Q. Will you please state what you mean by "indirectly"?

A. We had our brokers try to buy some.

Q. Was Mr. Bridewell one of them?

A. Mr. Bridewell, of Little Rock, and Lyle & Lyle, of Huntsville, Alabama.

Mr. ROBERTS. We move to strike out the answer unless he knows of his own personal knowledge.

Q. Will you state how you know that?

A. We wired them to buy ties, if they could, and they wired us they could not get any.

Mr. ROBERTS. We move to strike that out as being purely hearsay evidence.

The EXAMINER. I will note your exception, Mr. Biggs, but the rule is it will have to go in anyway.

Mr. BIGGS. It is giving the contents of a paper.

The EXAMINER. You saw the telegram, did you?

The WITNESS. Yes, sir; Mr. Bridewell sent us the telegram from the concern that refused to sell the ties without bagging.

Mr. BIGGS. We move to strike that out as hearsay, giving the contents of papers.

The EXAMINER. The motion will be noted.

By Mr. THOM:

Q. You requested your brokers to endeavor to get cotton ties?

A. Yes, sir.

Q. You were unable to get them?

A. We were unable to buy a sufficient quantity.

Q. For what years?

A. For 1916 and 1917.

Q. Will you please state whether your business was affected by your inability to get cotton ties?

Mr. BIGGS. We object to that. I do not think that is a material issue in this case, how his business was affected one way or the other. We are not going to inquire whether he was a good business man or a bad business man.

The EXAMINER. Your objection will be noted.

Mr. BIGGS. Yes, sir.

By Mr. THOM:

Q. Will you please state any specific instances of your business being affected adversely by your inability to obtain a sufficient quantity of cotton ties?

A. We sold a quantity of bagging at one cent below the prevailing market price alone, that is without furnishing ties in order to dispose of bagging without having to furnish ties with it.

Q. Did you purchase any cotton ties in 1916 from any concern in Georgia?

A. Yes, sir.

Q. From whom?

A. From Claud H. Hutchinson of Jonesboro.

Q. What did you have to pay for them?

A. We paid $1.40 a bundle.

Q. How did that compare to the ruling market price on ties?

A. It was 11 cents over the market.

Q. How many bundles did you purchase?

A. 10,000 bundles.

Q. What was your loss on that?

A. $1,000.

Q. Did you state what year that was?

A. Yes, sir; 1916.

Q. In the year 1916, did you carry over any cotton bagging?

A. Yes, sir; we carried over our November production.

Q. In previous years had you been in the habit of carrying over any?

A. Very little; we practically sold up December first.

Q. Have you assigned any reason in your mind as to the cause of carrying that bagging over, that November output?

Mr. Biggs. We object to calling for his opinion as to why he was unable to go out in the business and compete with other people to market his product. I think we ought to get the facts, not his reason or opinion about something.

The Examiner. I think he can state his reason as to why he was not able to dispose of it.

By Mr. Thom:

Q. Will you state your opinion as to why you carried over
486 the November output?

The Examiner. Just ask him why he did it.

By Mr. Thom:

Q. State why.

A. Because we did not have sufficient ties to go with bagging if you did not sell entirely——

The Examiner. I think that is a statement of fact now.

Mr. Biggs. What year was that?

The Witness. 1917; last year.

Mr. Thom. And 1916?

The Witness. Both years. 1916 we carried over the November production; both years.

Q. Testimony has been introduced, Mr. Gholson, to the effect that Warren, Jones & Gratz have adopted a policy of selling ties only with an equivalent amount of cotton bagging. Will you please state what a continuance of that policy will mean to your business if you were unable to get cotton ties from Warren, Jones & Gratz without cotton bagging?

Mr. Biggs. We object to that because we do not think the evidence shows the adoption of any such policy. We object to
487 the witness stating what his speculative idea would be as to what the result would be on his business. There are a few isolated instances here in the record of they having at that particular time, in 1916, at the beginning of the season when they had reason to believe and the evidence showed there would be a shortage of cotton ties, sold their ties and sold their bagging with them. They go together, while Mr. Thom is saying that it is a policy adopted in the trade. I do not think the evidence warrants any such statement.

The Examiner. I think he had better confine it to just what has happened to himself, what has been his experience.

By Mr. THOM:

Q. If there was a continuation of your inability to get ties what would you say would be the effect upon your business?

A. We would have to curtain our business. If we could not get ties we could not sell the bagging, or if we could not manufacture the ties, we would either have to do one or the other.

Q. Mr. Gholson, are you connected with another concern besides the Carolina Bagging Company?

A. Yes, sir; the India Bagging Company.

488 Q. Will you please state the difference between those two concerns as to their dependency on cotton ties?

A. The Carolina Bagging Company manufactures a great deal of second-hand bagging, also second-hand ties to go with it. The India Bagging Company only manufactures new bagging and they depend solely upon the new tie manufacture for their supply.

Q. Does the Carolina Bagging Company manufacture enough second-hand cotton ties to go with their bagging?

A. About; yes, sir.

Q. So it is the India Manufacturing Company——

A. The India Manufacturing Company does not manufacture any ties at all.

Q. So they are entirely dependent?

A. They are entirely dependent upon the manufacture of new ties.

By the EXAMINER:

Q. Where is this India Manufacturing Company?

A. Henderson, North Carolina.

Q. Both are at the same place?

A. Yes, sir.

By Mr. THOM:

Q. What is your position in the India Manufacturing Com-

489 pany?

A. Secretary and sales manager.

Q. This testimony that you have been giving about your inability to get cotton ties and also with regard to the ties you had to purchase at a premium, was that for the Carolina Bagging Company or for the India Company?

A. It was for the Carolina Bagging Company and the India. We are selling agents for the India Bagging Company.

Cross-examination by Mr. BIGGS:

Q. Mr. Gholson, your two concerns are owned by the same people, are they?

A. No, sir; not exactly. Some stockholders in the India Company are not connected with the Carolina Company.

Q. Are they the same directors?

A. Some of the same, not all of them.

Q. The same officers?

A. The vice president, the secretary, and the treasurer are the same—no; the vice president and the secretary are the same as the Carolina, the treasurer is separate man.

Q. Is the president the same of both companies?

A. The president is the same in both companies; yes, sir.

Q. What is his name?

490 A. John D. Cooper.

Q. They do business in the same place, do they, Henderson, North Carolina?

A. Yes, sir.

Q. The same office?

A. Yes, sir.

Q. Have the same mill?

A. No, sir.

Q. In the same location?

A. Half a mile apart.

Mr. THOM. There was one question that I overlooked, which I would like to ask at this time.

Mr. BIGGS. All right.

By Mr. THOM:

Q. You stated that Bridewell & Company were your agents?

A. Yes, sir.

Q. They stated in their testimony in New Orleans that they could not produce any records, any letters, or correspondence, owing to the fact that they had sent this correspondence to you, to the Carolina Bagging Company, and that they had written to you, the Carolina Bagging Company, to have these letters and telegrams

491 returned, but had not received any from you. Will you please state whether those facts are correct?

A. Yes, sir; they are correct. The papers were sent to us and misplaced in our office, and Bridewell, as soon as he was subpœnaed in New Orleans, wrote us for the papers, but we were unable to locate them.

Q. Have you ever been able to locate them?

A. No, sir.

By Mr. BIGGS:

Q. Now this Carolina Bagging Company, you say they manufacture second-hand bagging?

A. Their principal business is the manufacture of new bagging.

Q. The Carolina Bagging Company?

A. Yes, sir.

Q. What is the India Bagging Company?

A. They manufacture new bagging, too, now.

Q. And the Carolina Bagging Company manufactures new bagging, too?

A. Yes, sir.

Q. Does it manufacture ties also?

A. It supplies second-hand ties.

492 Q. I understand you to say as far as the sales of your product from the Carolina Bagging Company is concerned, you manufacture enough ties to go with that production?

A. No, sir.

Q. Then I misunderstood you?

A. We manufacture about enough ties to go with the second-hand bagging, but the second-hand bagging is a small part of the product manufactured by the Carolina Bagging Company.

Q. The Carolina Bagging Company also manufactures what is known as second-hand bagging and also new bagging?

A. Yes, sir.

Q. What are you making new bagging out of?

A. Raw material from the cotton mills known as rewoven bagging.

Q. Made out of old gunny?

A. Made out of old gunny.

Q. You do not use any new fibre at all?

A. We do not make any new bagging.

Q. You really do not make any what is known as new bagging at all, the Carolina Bagging Company?

A. No, sir.

493 Q. With the product that is manufactured by the Carolina Bagging Company you sell with that product second-hand ties, do you?

A. With the second-hand product manufactured we sell second-hand ties.

Q. And you make second-hand ties and also buy second-hand ties, do you not?

A. Yes, sir.

Q. And you buy new ties?

A. Yes, sir.

Q. How long have you been in business?

A. Since 1908.

Q. Who have you usually been buying ties from?

A. From the Pittsburgh Steel Company.

Q. They have been your regular people?

A. And the Atlantic Steel Company.

Q. They have been the regular people who have always supplied you in your trade with ties?

A. Not all; we bought Carnegie ties through their brokers, through J. W. Cooper & Company, or C. H. Hutchinson. In other words, we picked up all the ties we could, but could not get over 11 per

494 cent of our requirements from the Pittsburgh Steel Company.

Q. Why did you not get them from the Pittsburgh Steel Company?

A. We could not get them; they could not let us have them except in a certain quantity.

Q. You say you did buy from the Carnegie Steel Company?

A. We bought from the Carnegie Steel Company in 1917.

Q. Did you buy any in 1916?

A. No, sir.
Q. Did you try?
A. Yes, sir; I think so.
Q. You think so?
A. I am not sure.
Q. Did you look up any correspondence showing whether or not you tried to buy ties from the Carnegie Steel Company in 1916?
A. No, sir.
Q. So you came here to this hearing complaining, saying you could not get ties, but you do not know positively; you did not look up the correspondence to ascertain whether in 1916 you tried to buy any ties from the Carnegie Steel Company; is that true?
495 A. I do not remember trying. Possibly we did; I am not sure.
Q. If you had tried to buy them you would be pretty liable to remember the fact, would you not, if you were not able to get them? That is what you are complaining about here, that is your complaint, that your business suffered by reason of the fact you could not get ties; still you are unable to tell whether or not you tried even in 1916 to buy ties from the Carnegie Steel Company, is that not a fact?
A. I think we tried. I am not sure.
Q. You did not look up your files?
A. No; I did not look it up.
Q. You did not look them up to see whether you had tried?
A. No; I did not.
Q. In 1917, you did try and bought them from the Carnegie Steel Company?
A. 25,000 bundles.
Q. Is that all you asked for?
A. We asked for 100,000 and later asked for 50,000.
Q. Did you try to buy any ties through Warren, Jones and Gratz, of St. Louis, in 1916?
A. No, sir.
496 Q. Did you in 1917?
A. No, sir.
Q. You are their competitors in the bagging and tie business, are you not?
A. I don't know whether we are or not. We sell bagging.
Q. And you buy second-hand ties, you say you bought some from Mr. Claud Hutchinson in 1916?
A. Yes, sir.
Q. How many did you buy altogether?
A. You mean second-hand ties?
Q. Yes.
A. We bought new ties from C. H. Hutchinson.
Q. How many bundles?
A. 10,000.
Q. Was that in 1916?

A. Yes, sir.
Q. How many old second-hand ties did you buy?
A. In 1916?
Q. Yes.
A. I don't think we bought any.
Q. Did you buy 18,000 bundles from Mr. Hutchinson in 1916?
497 Of new ties?
Q. Yes, sir.
A. We might, I am not sure. I know we bought 10,000.
Q. Did you look up your records to find out how many you bought from him before you came to this hearing?
A. No, sir.
Q. Did you buy any ties from Mr. Hutchinson in 1917?
A. Yes, sir.
Q. How many?
A. I do not know the exact number of bundles. You mean new ties?
Q. Yes, sir.
A. No, sir.
Q. Did you buy any in 1917?
A. No, sir.
Q. Did you buy second-hand ties from him?
A. Yes, sir.
Q. The ties you bought from him you say were bought in 1916?
A. Yes, sir.
Q. 10,000 bundles?
A. Yes, sir.
498 Q. You do not know how many more, but you do know you bought 10,000?
A. Yes, sir.
Q. You may have bought more?
A. We may have.
Q. And if Mr. Hutchinson says you bought 18,000 you would not doubt it at all, would you?
A. Not at all.
Q. You bought those ties and where did you sell them mostly?
A. In Texas.
Q. You say you bought them at $1.35?
A. At $1.40, if I am not mistaken.
Q. Did you look it up?
A. $1.40 is what we paid for them.
Q. You looked that up?
A. I did not look it up but I remember it.
Q. Did you get any discount or anything of that kind?
A. No, sir.
Q. You sold them in Texas that year?
A. Yes, sir.
Q. What price did you get for them?

499 A. The market price; I do not remember; they sold for so much per pattern for bagging and ties. We didn't sell the ties straight.

Q. Is it not true you sold them as high as $2.50 a bundle for some in Texas?

A. I don't think so.

Q. Did you look that up or do you just speak from memory? Are you positive about that?

A. How is that?

Q. I say, are you positive you did not sell those for as much as $2.50 a bundle, some of them? I am not speaking of all of them.

A. In 1916?

Q. Yes.

A. We did not.

Q. Did you buy second-hand ties from Mr. Hutchinson in 1917?

A. Yes, sir.

Q. Did you sell them in Texas, too?

A. No, sir; we sold some few in Texas; very few of them.

Q. You say you carried over some bagging in 1916?

A. Yes, sir.

500 Q. Stuff you made in November of that year?

A. Yes, sir.

Q. That is about the end of the season, is it not?

A. We consider the end of the season around the 25th of November.

Q. So you ran your mill during the month of November and made bagging which you carried over?

A. Yes, sir.

Q. All the rest of your production you sold that year?

A. Yes, sir.

Q. And you had ties to match the bagging?

A. No; we did not have ties to match all of it; we sold a good deal of the bagging without ties.

Q. The 1916 cotton crop was somewhat short; is that not true?

A. Yes, sir.

Q. Do you think that had anything to do with your being unable to market your bagging, the part you made at the end of the season?

A. It may have.

Q. Is that not the reason, Mr. Gholson?

501 A. No, we did not sell our full production, simply from the fact we have not been able to get sufficient ties to go with them.

Q. Did you have any orders for that bagging you manufactured in November that you turned down because you did not have ties to go with it?

A. I don't remember.

Q. The fact that you carried this bagging over was due to the fact that the cotton crop was short and there was not the demand for the production; is that not true?

A. We could have sold the bagging if we had had the ties to go with it.

Q. How do you know you could? You say you did not get any orders.

A. We refused to sell the bagging for the simple reason we did not have ties to match it. We could not sell one without the other.

Q. The Pittsburgh Steel Company had been the corporation from year to year that usually supplied you with your supply of new ties?

A. Partly.

502 Q. Did you buy them from Pittsburgh this year, 1917?

A. Yes, sir.

Q. You have been doing business with them all the time since you have been started in business, have you not?

A. Yes, sir.

Q. You have never been a regular customer of the Carnegie Steel Company at all, have you, except in instances they did furnish you ties when you asked for them?

A. They furnished us 25,000 in 1917.

Q. Is that the only time you ever bought ties from the Carnegie Steel Company?

A. That is the only time we ever bought them direct from them. We used some of their ties in previous years, but we bought them through brokers.

Q. You have testified here something about your brokers, your agents—Mr. Lyle, I believe was one of them—in Huntsville, Alabama?

A. Yes, sir.

Q. And Mr. Bridewell in Arkansas?

A. Yes, sir.

Q. Having attempted to buy his ties from the Carnegie Steel Company or from Warren, Jones & Gratz, do you know what 508 period of the year it was that these attempts were made that you speak of?

A. Between May 20th and May 25th of 1917.

Q. Between what dates?

A. May 20th and May 25th of 1917.

Q. Do you know what date the market opened for cotton ties that year; this is 1917?

A. Yes, sir; I think it opened on May 16th.

Q. How do you know these efforts were made by these parties?

A. They sent us telegram; one telegram from P. P. Williams, stating they would not sell——

Q. I am not asking you the contents of any papers. I only want to know whether you knew that from hearsay evidence or from what they told you.

A. I know it from correspondence they sent us.

Q. You have not got that correspondence here?

A. No, sir.

Q. You did not bring it along with you?

A. No, sir.

Mr. ROBERTS. I think the telegram he stated he received from Mr. P. P. Williams, Mr. Williams being a party to this suit
504 and an accredited agent of Warren, Jones & Gratz, that that amounts to an admission on his part, and that is admissible provided the telegram has been lost or mislaid.

Mr. BIGGS. The telegram is not here. I object to it because he did not bring the telegram here.

The WITNESS. The telegram has been misplaced.

Mr. THOM. My reason for asking the question I did just now was to establish the fact that the correspondence had been mislaid and lost, and consequently his testimony would be admissible and also Mr. Bridewell's testimony.

The EXAMINER. It is all in the record.

By Mr. BIGGS:

Q. How many different manufacturers of second-hand ties are there in the country, do you know?

A. I do not know, a good many.

Q. A good many of them?

A. Yes, sir. Cotton mills manufacture them.

Q. They are scattered all over the south, are they not?

A. Yes, sir.

Q. Did you make any attempt to buy ties from the Connors-Weyman Company in Birmingham?

A. Yes, sir.

505 Q. When?

A. Between May 20th and May 25th, 1917.

Q. In 1916, did you?

A. Yes.

Q. You bought ties, as I understand you to say, from the Atlantic Steel Company and from the Pittsburgh Steel Company?

A. Yes, sir.

Q. And also from the Carnegie Steel Company?

A. Yes, sir.

Mr. BIGGS. Your Honor, may Mr. Gratz be permitted to ask the witness a few questions.

Mr. THOM. It has been at least an unwritten law of the Commission that no two attorneys of the Commission can ask the same witness questions, and that one attorney having started an examination, the other attorney, if he desires to ask any questions can ask them through the attorney conducting the examination. I think it certainly should apply if Mr. Gratz desires to suggest any question.

The EXAMINER. He may ask them through Mr. Biggs.

Mr. GRATZ. That would put me at a considerable disadvantage.

The EXAMINER. No, you have a good lawyer there.

506 Mr. GRATZ. It goes back a good many years and I can hardly suggest to Mr. Biggs to get them asked as I want

them. Not that I doubt Mr. Biggs' ability, but there are a whole lot of things that I acquired knowledge of in the last ten or fifteen years I should like to be permitted to ask about.

Mr. THOM. We still object to Mr. Gratz being permitted to ask any questions.

Mr. GRATZ: This is proceeding on the ground of unfair competition on my part, and I should like to suggest that there may be unfairness in the carrying on of the examination and the objection of the attorneys.

The EXAMINER. You may ask your questions through Mr. Biggs.

Mr. THOM. I wish also to register a protest against the language used by Mr. Gratz.

By Mr. BIGGS:

Q. You have been with the Carolina Bagging Company since 1908, I understand?

A. Since it was organized, in 1908.

Q. Are you the concern, the India Bagging Company or the Carolina Bagging Company, that did business with William Cleghorn?

A. No, sir.

507 Q. Do you know who William Cleghorn is?

A. I know of him.

Q. A concern in Dundee?

A. It is foreign; I think it is in Dundee.

Q. Did you ever buy any of the Cleghorn goods?

A. No, sir.

Q. Did you ever have a contract with him for the purchase of goods?

A. No, sir.

Q. Did you ever buy any Dundee bagging?

A. Yes, sir.

Q. Who from?

A. From A. S. Smart.

Q. Was that London or Dundee?

A. Dundee.

Q. Did you get the bagging?

A. Yes, sir.

Q. Did you have any difficulty or disagreement about that trade?

A. No, sir.

Q. Did you ever buy any goods of Oppenheimer & Company, of New York?

508 A. What kind of goods do you mean?

Q. Well, raw material of any kind that you used in your mill?

A. Yes, sir; we have bought a good deal of raw material from them.

Q. Did you have any trouble or disagreement with them over your contract?

A. We had some trouble with short weight.

Q. Did you have any litigation with them about it?

A. I think they settled it. We did not sue them. They paid it.

Q. They shipped you stuff and you said it was short weight?

A. Yes, sir; we bought gunny and they shipped gunny and burlap mixed.

Q. You made a claim, did you, for the shortage, which was settled?

A. They made good.

Q. How many second-hand ties and piece ties do you manufacture on the average per year?

A. I reckon 100,000 bundles; about 100,000 bundles.

Q. How many new ties do you usually buy?

509 A. It varies. One year we bought 74,000 or 75,000 bundles; that was last year; 1916 we bought a little more than that, I think.

Q. Did you buy 75,000 to 100,000 new ties, and you manufacture about 100,000 bundles of old ties?

A. Yes, sir.

Q. You buy old ties, too?

A. We buy old ties occasionally.

Q. How many do you usually buy of old ties?

A. In 1917 we bought, I should say, 20,000 bundles of second-hand ties.

Q. That makes about 200,000, or something over 200,000, bundles of ties you bundle of various kinds on an average each year?

A. Something of that kind.

Q. How much bagging do you manufacture a year on an average?

A. About 100,000 rolls of rewoven bagging.

Q. How many yards is that?

A. 50-yard rolls; we make some 60-yard rolls. I would say 20 to 25 per cent is 60-yard rolls and 75 per cent 50-yard rolls.

Q. What is the usual production per year?

510 A. About 100,000 rolls.

Q. Is that the total production of the two plants that you have?

A. Yes, sir.

Q. That is about 5,000,000 yards?

A. A little over 5,000,000 yards.

Q. About 20 per cent you say is 60-yard rolls?

A. 20 to 25 per cent at a rough estimate is 60-yard rolls.

Q. Do you know how many yards of bagging you made in 1917?

A. I said about 100,000 rolls, 50-yard rolls, about 80,000 50-yard, and about 20,000 sixties.

Q. That would be about 5,200,000 yards?

A. About that; yes, sir.

Q. And your ties usually run from 200,000 to 225,000 per year, something over 200,000?

A. Something over 20,000 we do not buy every year 20,000 bundles of second-hand ties; some years we do not buy any. I would say we handle around 200,000 bundles a year, both new and second-hand

Q. But you can buy second-hand ties, if you have not bought them, it was not because of your inability to buy them?

A. Sometimes we could not.

511 Q. Because you did not need them, second-hand ties?

A. Sometimes we could buy them and sometimes we could not buy them.

Q. Do you know when you have made an effort to get second-hand ties and could not get them?

A. At one time last year we could not buy any second-hand ties.

Q. Could you give us an estimate, if you know, Mr. Cholson, of the amount of second-hand ties that are manufactured in the United States each year?

A. I could not tell you that.

Q. Can you give us the names of the principal manufacturers of second-hand ties? You have told us they were scattered all over the South, various small concerns.

A. I can give you the names of some. I can not give you the names of all.

Q. I would not ask you; there are so many you doubtless could not give us all of them, but give us the names of as many of these as you can, of the principal manufacturers of second-hand ties.

A. C. H. Hutchinson, Jonesboro, Georgia.

Q. Do you know about how much he produces each year?

512 A. No, sir.

Q. Have you not got any idea about it?

A. No, sir.

Q. He is one of the principal ones?

A. Yes, sir.

Q. Who else?

A. The Southern Bagging Company, Norfolk.

Q. Can you give us an idea of their production in a year?

A. No, sir.

Q. Who else?

A. Greenville Bagging Company of Greenville, South Carolina.

Q. Do you know what their production per year is?

A. No, sir.

Q. Who else?

A. The Imperial Bagging Company, Norfolk.

Q. Can you give us an idea of their production?

A. No, sir.

Q. You have bought second-hand ties from these concerns at various times?

A. We have bought some from them; yes, sir.

513 Q. Can you give us anybody else except those concerns that are manufacturers of second hand ties?

A. I do not recall any others just now.

Q. Those are the principal ones you know of?

A. Yes, sir.

Q. You say there are many others?

A. I think so.

Q. They are practically made in hundreds of places throughout the South, is that not true?

A. Yes, sir.

Q. Compresses make them?

A. Yes, sir. I would like to mention one thing. You asked me a while ago about the yardage of the bagging manufactured. The yardage I gave you applied to new bagging only; it did not apply to second hand bagging. I want to put you straight on that. I do not know whether you understood it that way or not.

Q. In other words, you mean to say you manufactured something over 5,000,000 yards of new bagging?

A. Yes, sir; rewoven bagging.

Q. How much of the other?

A. About 100,000 30-yard rolls.

Q. What kind of bagging do you call that?

A. Second hand jute bagging and second hand sugar bag-
514 ging.

Q. Second hand jute bagging and second hand sugar cloth?

A. Yes, sir.

Q. Have you given us that for this past year, or is that your average?

A. That is about our average for the last two years.

Q. And the ties you bought from Mr. Hutchinson were new ties you told us about which you say you knew were as much as 10,000 bundles?

A. Yes, sir; that was 1916. We did not buy new ties from Mr. Hutchinson in 1917.

Q. You didn't try to?

A. Yes, sir.

Q. Did you make any efforts in these other years, 1916 or 1917, to buy second hand ties outside of the trade you had—did you buy any second hand ties from Mr. Hutchinson?

A. In 1916?

Q. Yes, sir.

A. I do not think so.

Q. Did you make any effort to buy from these other second hand tie concerns, the Southern Bagging Company, the Greensville, or the Imperial?

A. We may have; I do not remember buying second hand
515 ties from them.

Q. You manufacture these ties out of old ties?

A. Yes, sir.

Q. When was it, was it in 1916 or 1917 that you had a surplus of material out of which to manufacture old ties?

A. I do not think we had a surplus either year.

Q. Did you not sell Mr. Hutchinson 800,000 pounds of material out of which second hand ties were made each time?

A. You mean old ties, piece ties from compressed cotton?

Q. Yes, sir.

A. Yes, sir; we sold him a good many cars of old ties from compressed cotton.

Q. You did not use that to make up your new ties?

A. The sale of splice ties in our trade is limited; we can not sell so many bundles of splice ties, consequently we let Mr. Hutchinson take a part of our raw material.

Q. Did you get any ties from Stone & Company, of Wilmington?

A. No, sir; we bought ties from I. W. Cooper Company, Wilmington, and I do not know who they bought them from, pos-
516 sibly got them from some wholesale people there. I do not remember. We bought them from Cooper, I. W. Cooper, in 1916.

Q. Were they Carnegie ties?

A. Yes, sir; shipped from Memphis.

Q. This raw material that you sold to Mr. Hutchinson, was that all just piece ties?

A. Yes, sir; short pieces.

Q. All of them?

A. All of them from compressed bales.

Q. Do you sell full length second-hand ties?

A. Yes, sir; we sell some; we do not get but very few of them.

Q. That material that comes from that, is it a conglomerate, made some from whole and some from piece ties?

A. Very few whole ties; most of the mills use compress cotton, most of the mills we buy from.

Q. What does that indicate because they use compress cotton?

A. Short ties and they are cut.

Q. They have to be riveted together and made into whole ties?

A. Yes, sir.

517 Q. You had a surplus of that sort of material which you turned over to Mr. Hutchinson?

A. Yes, sir.

Q. When was that?

A. We have been selling Mr. Hutchinson ties the past three or four years from time to time.

Q. You were in need of ties and wanted ties, why did you dispose of carloads of your material which you used in the manufacture?

A. We can not sell those spliced ties in some sections. West of the river we can not sell anything except new ties.

Q. West of the Mississippi River?

A. West of the Mississippi River.

Q. What portion of your product, ties and bagging, is sold west of the Mississippi?

A. I imagine 25 per cent.

Q. But the bulk of your business is done in the southeast, is it not, around your neighborhood where you live?

A. Yes, sir; in the past two years we have sold heavier west of the Mississippi River, probably it will run more than that for the past two years. In fact, I know it will.

Q. Did you ever try, during these years, to buy any new
518 ties from the Ludlow Manufacturing Associates in Boston?

A. No, sir; I do not remember trying.

Q. You know they are in the business of selling ties, do you not?

A. I did not know they were in the tie business. I knew they were in the bagging business.

Q. You did not know they sold ties?

A. I did not know it; no, sir.

Q. Where does Mr. Bridewell live and what is his address in Arkansas?

A. At Little Rock, Arkansas.

Q. You think in the business ties usually are or would be shipped from Vicksburg, Mississippi, up to Little Rock, Arkansas? You have told about some telegram you had from P. P. Williams & Company about ties?

A. Yes.

Q. Well, is it supposable or possible that the ties would be shipped from Vicksburg up to Little Rock? You were trying to buy them, I understand, from Mr. Bridewell, in Vicksburg, Missi'ppi?

A. Yes, he tried to buy them from P. P. Williams & Company.

Q. How were you expecting to get them from Pittsburgh
519 to Little Rock?

A. We did not want them in Little Rock; we wanted them in Memphis or Houston.

Q. How would you get them from Vicksburg to Memphis or Houston?

A. We did not expect to get the ties from Vicksburg; we expected Bridewell to be able to buy them from either Carnegie or the Pittsburgh Steel Company, or any one that would sell him these ties for shipment west of the river. We could have bought ties for that shipment to Georgia and Alabama, but we could not use those ties.

Q. You could have bought them?

A. Yes; we could have bought new ties from brokers in South Carolina, probably the United Steel Company ties, but we wanted ties we could ship west of the river, either Memphis or Houston.

Q. It was not a question, then, of difficulty of getting ties, it was only of getting a particular kind of tie in a particular place?

A. It was a question of getting ties to go west of the river.

Q. Why could they not go from Birmingham or Atlanta?

520 A. They would not ship them from Birmingham; we did not buy any from Birmingham, and the Atlanta ties were bought for shipment to Georgia and Alabama interior points.

Q. Why could they not be bought to go west of the river?

A. We could have shipped them to some Georgia point and then shipped them west of the river, but that would cost 15 to 30 cents a bundle more than the market price.

Q. Then it is true, is it, that the Atlantic Steel Company are limited as to the territory in which they will ship ties?

A. Yes, sir.

Q. And it is true also of the Connors-Weyman Company of Birmingham?

A. We have not been able to get any from the Connors-Weyman Company.

Q. So this complaint that you had in 1916, or the time you speak of, was not a question of shortage of ties, it was a question of getting ties which you could ship to Houston?

A. Yes; to get ties to go west of the river.

Q. You could have gotten all the ties you wanted to go east of the river?

A. We sold mostly second-hand ties to go with the second-
921 hand bagging east of the river, and we were not handicapped to any great extent on new ties to go with bagging east of the Mississippi River.

Q. If you had gone to the Atlantic Steel Company and bought your ties, which you say you could have done, why you could have shipped them any place in the United States you wanted them, could you not?

A. Yes; by paying the difference in freight.

Q. By paying the difference in freight?

A. Yes, sir.

Q. In other words, it is simply a question of the difference in freight. The ties you were trying to buy you say through Mr. Bridewell, were ties to be shipped at a cheaper rate of freight west of the Mississippi River?

A. We wanted to ship the ties we tried to get Mr. Bridewell to buy for us to Memphis and Houston.

Q. And it depended entirely upon the price, did it not?

A. We wanted them at the market price. We could have bought them from Connors-Weyman at 34 cents over the market.

Q. That is what they wanted for their ties?

A. They wanted $2.50 Memphis, and the wholesale price was about $2.15 or $2.16.

922 Q. Connors-Weyman wanted $2.50?

A. Yes, sir.

Q. How about the Atlantic Steel Company; did they want a big price, too?

A. They would not quote anything delivered any points except Georgia and Alabama points.

Q. They refused to quote you except Georgia and Alabama points, the Atlantic Steel Company?

A. In their contract they only agreed to ship to Georgia and Alabama interior points.

Q. And Connors-Weyman did quote you, but they wanted $2.50?

A. Memphis; yes, sir.

Q. How did you expect Williams of Vicksburg to quote you Memphis?

A. We expected Mr. Bridewell to get quotations on ties in that territory, and we presumed he could get them for delivery in Memphis or Houston, inasmuch as he was on that side.

Q. Then Williams refused to quote you delivery at Memphis or Houston and not Vicksburg; is that not true?

A. Williams simply wired Bridewell he would not sell ties without bagging.

523 Q. That was in what year?

A. That was in 1917.

Q. That is the telegram you have told about that is lost?

A. Yes, sir.

Q. Where did you see that telegram?

A. In our office.

Q. And it never left your possession?

A. It was sent to us by Mr. Bridewell to show he had tried his best to get ties for us but had been unsuccessful.

Q. In the event Mr. Bridewell produces that telegram, how could it be in your office?

A. In the event he produces it?

Q. Yes, in the testimony given by him on the stand in New Orleans.

A. He produced a copy, I suppose.

Q. You are sure that was in 1917 or 1916?

A. 1917.

Q. Had you been doing any business, had Mr. Bridewell been doing any business with Williams & Company regularly?

A. I do not know.

524 Q. Mr. Bridewell is simply a broker out there at Little Rock, is he not?

A. Yes, sir.

Q. Did you ever give Warren, Jones & Gratz any preference in your business as far as ties are concerned?

A. No, sir.

Q. You tried to buy your ties always every place else you could buy them, and if you needed some more you wanted them to furnish them; isn't that about it?

A. Yes, we bought all we could get from Pittsburgh and the Atlantic Steel Company or Connors-Weyman, or anyone else we could get them from. We have tried to buy them from Warren, Jones and Gratz in years gone by but have never been able to get them.

Q. After you tried all other sources, then if not able to get ties, you then tried through the Carnegie Steel Company?

A. Yes, sir.

Q. And you did get them?

A. We got 25,000 in 1917.

Q. Is there any limit on the ties that you bought from the Carnegie Steel Company as to where they should go?

A. No, sir.

525 Q. They sold any place?

A. Yes, sir.

Q. They supplied the market anywhere in the United States?

A. In trying to buy from them we only told them we wanted them to go to Memphis and Houston.

Q. And both these years you speak of you sold all your product, your bagging and your ties, except you say you carried over some you manufactured in November?

A. Yes, sir.

Q. Was that in 1916 or in 1917?

A. Both years.

Q. At that time, along in November, the season is over, and no one is selling or buying bagging; is not that true, at that time, as a general proposition in the trade?

A. We usually sell; up until the last two years we have always disposed of our product until the latter part of November.

Q. That is not so the last two years?

A. The last two years we did not.

Q. What was the size of the cotton crop in 1914, 1915, 1916, and 1917?

526 A. I do not remember right off.

Q. Can you approximately give us an idea what it was? Say, take the year 1914.

A. 1914, I think it was around 15,000,000 bales.

Q. How about 1915?

A. I think it was somewhat less.

Q. Considerably less?

A. Yes.

Q. Do you know how much less?

A. I do not know.

Q. How about 1916?

A. I believe it was about 12,000,000 bales.

Q. And 1917?

A. Between 10,000,000 and 11,000,000 bales, I think.

Q. It has gotten smaller every year, is that not a fact, since 1914?

A. It seems so; yes, sir.

Q. And of course the smaller the cotton crop is the less bagging and ties required to cover it?

A. Yes, sir.

527 Q. Can you give us, in a general way, the yardage sales of your manufactured product of bagging, both kinds, for 1914, 1915, 1916, and 1917, approximately?

A. I would say approximately the last two years we have sold both secondhand and new bagging about 8,000,000, around 8,000,000 yards.

Q. The last two years?

A. The last two years; yes, sir. Prior to that time we did not sell as much.

Q. And notwithstanding the fact that the cotton crop was smaller these last two years, why your sales of bagging and ties have increased?

A. Yes, sir.

Q. You have been selling more bagging and more ties each year for the last four years?

A. Yes, sir.

Q. Although the demand for bagging and ties has not been as great in the last two years as it was the two previous years?

A. Why, we sold more the last two years because we increased our production.

Q. And you sold it all except what you made right at the end of the season and carried over?

A. Yes, sir.

Q. Did you make any complaint to the Federal Trade Com-
528 mission?

A. No, sir.

Q. Did they come to see you about this matter?

A. Yes, sir.

Q. Who came to see you?

A. Their representative; I do not recall his name.

Q. Mr. Roberts, who sits with counsel here?

A. No, sir.

The EXAMINER. Why do you think that is material, Mr. Biggs?

Mr. BIGGS. It has been testified by practically every witness who has been on the stand, not by my side of this case, but brought out by Mr. Roberts himself.

The EXAMINER. No; I rather recall you brought it out whether they had made any complaint, and so forth. It does not make any special difference.

Mr. BIGGS. As far as the complaint is concerned, yes; I asked that question. That is true.

Redirect examination by Mr. THOM:

Q. You stated on cross-examination that the Atlantic Steel Company woul not sell west of the Mississippi or to coast points?
529 A. No, sir.

Q. And that Connors & Weyman advertised considerably above the market?

A. Yes, sir.

Q. That confined you then to what corporations to get your ties from?

A. To the Pittsburgh Steel Company and the Carnegie Steel Company.

Q. It was also testified that there was a smaller crop in these respective years. Can you explain the reason why, therefore, there should be a greater difficulty in obtaining cotton ties in those years?

A. I can not explain it, no.

Q. You testified that the Carolina Bagging Company rewove bagging and also made second-hand bagging?

A. Yes, sir.

Q. And I believe you testified that the second-hand ties made by you took care of just the second-hand bagging?

A. Approximately; yes, sir.

Q. And that the rewoven bagging of the Carolina Bagging Company and all of the bagging of the India Bagging Company you had to look for ties elsewhere?

530 A. Yes, sir; unless we sold the bagging without the ties.

Q. In view of your cross-examination and the answers brought out by them, have you changed your view as to the effect on your business from a failure to get cotton ties?

Mr. BIGGS. We object to that.

Mr. THOM. I will withdraw the question.

Recross-examination by Mr. BIGGS:

Q. When you testify about the market price, what do you mean by that, Mr. Gholson?

A. I mean the prevailing opening price of cotton ties. What I meant by market price was that the market opened last year at $2.06, I believe, Pittsburgh basis.

Q. You do not expect the price to remain at that same figure all during the season, do you?

A. Well, we had been offered at that time bagging with ties at the opening price. There had not been any advance.

(The witness was thereupon excused.)

JOHN S. JENKINS was called as a witness and testified as follows:

Direct examination by Mr. THOM:

531 Q. Where do you live, Mr. Jenkins?

A. Norfolk, Virginia.

Q. Are you connected with the Dixie Manufacturing Company?

A. Yes, sir.

Q. In what capacity?

A. I am secretary, treasurer, manager, and I guess about everything else.

Q. What business is the Dixie Manufacturing Company in?

A. They are manufacturers of rewoven bagging, making bagging out of jute bagging that has been used once.

Q. Did you experience any difficulty in the years 1915, 1916, and 1917 in getting cotton ties?

A. We did, I remember, in 1916 and 1917, early in the season.

Q. How did that difficulty in obtaining cotton ties affect your business?

Mr. BIGGS. We object to that——

A. I can better explain that by submitting a letter.

Mr. BIGGS. I object.

Mr. THOM. What do you object to?

Mr. BIGGS. To his submitting a letter.

532 A. He is asking me a question that is answered in a letter. The men I sold bagging to, and the order was cancelled because I did not have the ties. That is the best evidence, the best way I can answer you. You are welcome to read the letters.

Mr. BIGGS. I object on the ground that it is an improper way of proving the fact; I object to letters written to somebody else.

A. They are written to me.

The EXAMINER. You can refresh your memory from reading this letter.

Mr. THOM. Did you receive that letter by due course of mail?

The WITNESS. I did.

Mr. THOM. I offer that letter in evidence.

(The letter was marked for identification "Jenkins Exhibit 1" received in evidence as follows:)

(Letterhead of M. J. Best & Sons.)

GOLDSBORO, N. C., *June 30th, 1916.*

Mr. JENKINS OF THE DIXIE MANUFACTURING CO.,
Norfolk, Va.

533 DEAR SIR: Since signing contract for 500 rolls of bagging on the 28th we find that we can buy no ties unless we take bagging also. Your man did not offer us any ties except 400 bundles at $1.50 f. o. b. Norfolk, and would suppose that you are not offering to sell ties in carloads direct. After learning that we could not get ties without taking bagging also, we phoned you, and found that you were out of the city until to-day. As we had opportunity of a car of ties by taking 200 rolls of bagging, and as there was doubt about your furnishing us ties, as your man did not offer to sell when here, the prices of ties being all ready out, we, to be sure of securing the ties we wanted, gave order for 200 rolls of new bagging, or rather 70% new. Therefore with these conditions we may not take up the entire contract with you, but will do the best we can. We think that you understand that we could do very little with bagging without ties to go with them, and we must necessarily take a part of our needs from elsewhere so as to get ties. We understand this is the rule with all sellers of ties, and the requirement generally is for equal quantity of bagging though we were able to place order for ties with about half the bagging required to go with them.

We are,

534 Yours, truly,

M. J. BEST & SONS.

The price of this carload delivered $1.50.

Mr. BIGGS. We object to that.

By Mr. THOM:

Q. Mr. Jenkins, that letter was from Mr. Best, was it not?

A. M. J. Best & Sons, I think, of Goldsboro.

Q. That was authority, that is I mean in that they cancelled your contract?

A. You can see exactly what the letter states, that they thought they might take part of it, but we could not sell them ties at that time and they did not want to take the bagging that we had sold them.

Q. Does your inability to furnish ties with bagging cause you to have to undersell the market price in order to dispose of your bagging?

A. Well, we may shave the price. I would not say, our prod-
535 uct is very small and we have usually managed to sell it; later in the season we may have to shave the price, and that may have been caused by these conditions but not materially.

Q. If the difficulty you have experienced continues in the future, what do you fear will be the result upon your business?

A. Of course if we cannot get ties, and this policy is pursued, people can not give us ties with bagging, we will not be able to sell the bagging that is all.

Q. Would that close you up?

A. Very near it, I guess.

Mr. BIGGS. Your honor, this letter does not refer to any respondent in this case or state anything any respondent did. *It* if they want to put it in the record all right, but I think it is absolutely incompetent, irrelevant, and immaterial. Maybe somebody did refuse to sell that man ties without bagging. I do not know, but we had nothing to do with it.

By Mr. THOM:

Q. Can you state what efforts you made to get ties, Mr. Jenkins, in the years 1916 and 1917?

A. We asked Messrs. Warren, Jones and Gratz in 1916 and they told us at that time they did not have any to offer; they did sell us ties later, and we had ties to sell after the date of this
556 cancellation.

Q. But that was cancelled because at that time they had none?

A. At that time we had been unable to get ties.

Mr. BIGGS. What date was that?

The WITNESS. This letter is dated June 30th, 1916, and I have another letter from them in which the acknowledge——

Mr. BIGGS. I just wanted to get the date.

The WITNESS. This is June 30, 1916.

By Mr. THOM:

Q. Let me see the other letter.

A. This is a letter dated July 13th.

Mr. THOM. I am going to ask to introduce that letter and I presume you will make the same objection.

Q. That letter was received by you in due course of mail around about the time it bears date, was it?

A. Yes, sir.

(The letter was marked "Jenkins Exhibit 2," received in evidence and is as follows:)

(Letterhead of M. J. Best & Sons.)

GOLDSBORO, N. C., *July 13, 1916.*

Mr. J. S. JENKINS,
537 *Norfolk, Va.*

DEAR SIR: We are in receipt of your letter of the 11th quoting ties f. o. b. Norfolk at $1.45. We are very sorry that you could not furnish us ties in car lots when your man was here and we made contract for bagging, so that we could have handled your bagging exclusively. We wrote you that we had to take 200 rolls bagging to get a car ties. This contract was not accepted, and we finally had to contract for 330 rolls to be able to get a car of ties. This necessarily still further reduces our quantity with you. We need some bagging now for wrap'ing for tobacco, and you will plese ship us fifteen rolls Dixie 2 lb. bagging at once. We are,

Yours, truly,

M. J. BEST.

The EXAMINER. You have not connected Warren, Jones and Gratz with being responsible for this.

Mr. THOM. No; that letter is not introduced for the purpose of showing that.

Mr. BIGGS. What do you say, your honor?

The EXAMINER. I say that might be noted in the record,
538 that this is no evidence that Warren, Jones and Gratz were responsible for the refusal to furnish ties.

Mr. THOM. That is perfectly true, but it is evidence, we submit, that the cotton-bagging manufacturer had to cancel a contract because of his inability to furnish cotton ties, which we consider is the question in issue, and on that ground we believe it is admissible.

Q. Did you make other efforts besides Warren, Jones and Gratz, Mr. Jenkins, to get cotton ties?

A. We asked brokers to try, but we never got any results from them; they had no ties to offer. I do not know now just who; some man in Chattanooga; I do not know who he was, but we have never been able to get any southern ties and we have been dependent on Warren, Jones and Gratz, and we have gotten ties a number of years from them.

Q. And you never experienced any difficulty until the last few years?

A. Until the last few years; yes.

Mr. BIGGS. I think he has testified to one particular occasion. I do not think it ought to be construed as a few years.

The EXAMINER. You can get that on cross-examination.

Cross-examination by Mr. Biggs:

Q. You bought ties from Warren, Jones & Gratz in 1916, did you?

A. Yes, sir.

Q. All you asked for?

A. I will not be sure about that. I know we got ties; I do not know how many we asked for or how many were sold us, but I think later in the season we got what we wanted. The trade had been canvassed, the bagging had been sold and supplied with ties before we could get any. After the trade was canvassed and sold our orders were cancelled——

Q. How many orders besides this were cancelled?

A. I can not state because I have not been over the books.

Q. Do you know of any?

A. I know of one other; yes. I won't say how many.

Q. Did you have orders cancelled for any other reason?

A. I imagine we did.

Q. Is it not true, Mr. Jenkins, in 1916 you got all the ties you asked for from Warren, Jones and Gratz and also in 1917?

A. No, sir; in 1917, they told us they would quote us ties as soon as the market was opened. They did not quote us when the market was opened, and finally we wired them, I think two or three days afterwards, and they said they could not offer us any ties except for August and September shipment, and I think we got 2,500 bundles for August and 2,500 for September. That was not when the market opened, however.

Q. Did you try to buy any from them when the market opened?

A. We had tried before and they stated they would quote us as soon as the market opened, which they did not do.

Q. This was in 1917?

A. That was in 1917.

Q. In 1916 how many ties did you buy from Warren, Jones & Gratz?

A. I do not know.

Q. How many did you get from other people in those two years?

A. I don't think we bought any out of the city. We may have bought some in the city.

Q. You bought your supplies from them?

A. Yes, we tried the Pittsburgh Steel Company and they said they had none to offer us.

Q. How many did you buy from Warren, Jones & Gratz in 1914 and 1915?

A. I have not those figures.

Q. You bought all you wanted?

A. Yes, I think we did.

Q. Did you buy any from Warren, Jones & Gratz direct?

A. I think we bought them all direct.

Q. Now, in 1916, the time that you have spoken about, did you make any efforts to buy ties from the Pittsburgh Steel Company that year?

A. Yes, we asked them, but they said they had nothing to offer then.

Q. The Pittsburgh Steel Company?

A. In 1916.

Q. Did you try to buy ties elsewhere?

A. Yes, sir; not directly from the manufacturers; we tried to get them through Ludlow Manufacturing Company and we were not successful there. The Ludlow Manufacturing Company, as you know, are manufacturers of bagging.

Q. Yes, they sell ties, too?

A. I don't know. They sell them in a way. I could not get anything from them that year?

Q. Were the Atlantic Steel Company—did you make any effort there?

542 A. No, I didn't ask them.

Q. You did not ask them?

A. No, because we have never been able to get a thing from them for shipment to North Carolina, and I have tried them several years and I got no satisfaction, and I did not ask them.

Q. They only ship in a particular territory, is that your understanding?

A. I do not know.

Q. Did you make any effort to buy them from Connors-Weyman Company?

A. No, sir.

Q. You say you did though try to buy them from the Pittsburgh Steel Company?

A. Yes, sir.

Q. Did you try to buy them direct from the Carnegie Steel Company?

A. No.

Q. And at the beginning, the very opening of the season, you say you were unable to get ties from Warren, Jones and Gratz, but you did get them a little bit later.

A. Yes, sir.

543 Q. How much later, what time did the season open in 1916?

A. I don't know.

Q. Can you answer the other question, how long after the season opened?

A. I think that letter is dated in July and we had ties to offer in July. This letter is dated July 13th and we quoted ties at that time. This letter was dated on June 30th and we did not have them, so we must, of course, have bought them in between those dates.

Q. Between June 30th and the 13th of July, 1916, then you did buy your supply of ties from Warren, Jones & Gratz?

A. Yes; because I was quoting them on July 13th.

Q. Is it not true they told you at the very beginning of the season that the tie market was short, and on account of conditions in the steel market they did not know how many ties they would be able to have and would not be able to quote you at that particular time.

A. What season?

Q. 1916.

A. They may have; I do not remember.

544 Q. I hand you a telegram to refresh your memory by and ask you if you remember having received that telegram?

A. In think in all probability we got this all right. This corresponds exactly with the date as specified in that letter. This date seems to be all right and I think we bought these ties.

Q. And it is true, is it not, that they stated to you, when they were able to get ties, they offered to sell them to you and gave you as a reason why they did not have them a shortage of ties, and, in order to refresh your memory about that, you got that letter from Warren, Jones & Gratz on that subject, did you not, dated July 8th?

A. You asked me a minute ago about asking for a supply of ties at this time.

Q. No; the reasons assigned to you, given to you by Warren, Jones & Gratz why they were not able to quote you the very beginning of the season on ties?

A. We had ties offered us by this man Hutchinson, of Jonesboro, after we could not get them from Mr. Gratz we had them offered by Hutchinson at a price somewhat higher than the market which we did not accept, showing there were ties at that time for sale, but we could not get them, the main supply from Warren, Jones & Gratz.

545 Q. You know a great number of ties are carried over in this country from year to year, new ties? You know a great number of ties are carried over by dealers?

A. Necessarily so, but not a great number.

Q. You do not know how many are carried over?

A. No; I do not.

Q. And Mr. Hutchinson is a dealer in new and second hand ties, and you know he carries over ties from year to year

A. I do not know anything of the kind.

Q. Where do you buy your supply of bagging, or do you manufacture all you sell?

A. You mean old bagging?

Q. New bagging.

A. No; we did not buy new bagging.

Q. You do not buy new bagging?

A. No, sir.

Q. How long since you bought new bagging?

A. New bagging?

Q. Yes, sir.

A. The Dixie Manufacturing Company does not buy new bagging.

Q. Never did?

546 A. No, they buy new jute.

Q. How about before you were in the business with the Dixie Manufacturing Company; you were in the bagging business, were you not? How long have you been in that business?

A. That is John S. Jenkins & Company; that has nothing to do with the Dixie Manufacturing Company.

Q. I am not asking about you personally.

A. That is another thing. I have been handling bagging 30 years. I do not know what it has got to do with this case, but as John S. Jenkins & Company we have been buying bagging and ties for 30 years.

Q. I asked from whom you bought new bagging.

A. The American Manufacturing Company, from different people, wherever I can pick it up.

Q. Since you have been with the Dixie Manufacturing Company you have not bought any new bagging; you have simply been in the business of manufacturing?

A. On the contrary, I buy bagging every year.

Q. You do?

A. Yes.

Q. Now?

A. From the Ludlow Manufacturing Company principally.

547 Q. You handle their brand of new bagging?

A. Yes, sir.

Mr. THOM. We object to this testimony. It is entirely immaterial what John S. Jenkins & Company does; they are not bagging manufacturers. We put Mr. Jenkins on as an officer of the Dixie Manufacturing Company to show simply and solely the effect on the bagging industry of a policy of Warren, Jones & Gratz. They are now asking him, as a member of another firm, who are not in the bagging business, something that is entirely immaterial.

Mr. BIGGS. All he has been telling you about has been done by John S. Jenkins & Company.

The WITNESS. Yes, those letters were written by——

Mr. THOM. You were acting as agents for them, were you not?

The WITNESS. I was buying it for the Dixie Company, yes.

By Mr. BIGGS:

Q. The trade you made for the cotton ties was in the name of John S. Jenkins & Company?

A. Yes, because I thought the chances of getting them

548 were better for our concern than the Dixie Manufacturing Company, who are very small compared with Warren, Jones & Gratz.

Q. That is a good reason?

A. Yes, that is exactly the reason, and I think probably a right good reason. I think it works sometimes but not always.

Q. I guess we know about that.

A. Yes, I dare say you do.

Q. The new bagging you have been buying has been from the Ludlow Manufacturing Company?

A. Yes, sir.

Q. You did not make any effort, as I understand you, to buy ties from the Ludlow Manufacturing Company; I believed you testified to that?

A. Let me get you straight on it. Our bagging here is bought in pool usually.

Q. In pool?

A. Yes, by one-half of a dozen of us getting together and buying probably 1,000 or more rolls of bagging together, and I think got some ties from the Ludlow Company. I did not get any of them, but I could have gotten them, I think, had I wanted them.

Q. You could have gotten them from Ludlow?

549 A. When they got them. I just wanted to get you straight on that matter.

Q. You have been all the time dealing in Ludlow's bagging?

A. Yes, sir.

Q. And you have not tried to buy ties from the Ludlow Manufacturing Company; as a general proposition you have expected Warren, Jones Q Gratz——

A. As a general proposition we have gotten them from Mr. Gratz up to the last few years.

Q. But when it comes to handling the bagging you give preference to the Ludlow Manufacturing Company?

A. Oh, yes; we have always handled—we have been accommodated——

A. And you have not expected them to sell you any ties; you have expected Warren, Jones & Gratz to do that, although you are handling a brand of bagging that is in competition with their bagging, and they have also done so as a general rule?

A. Up to the last two or three years; yes.

Q. What other time was there except 1916? I have understood you to say it was only this one occasion.

A. 1917, and we got ties from them in 1917, later.

550 Q. And 1916?

A. And they shipped us ties last year in August and September; I think we got 5,000 bundles from them. I think the letter is there which sets forth that.

Q. Did you ask for any more in 1917 that you could not get, tried to buy any from them that they did not sell you?

A. I think we bought some more later in the season. I am not sure.

Q. You are not familiar with the condition of the steel market and that sort of thing, are you, Mr. Jenkins?

A. I am not in touch with that; no, sir.

(The witness was excused.)

BENJAMIN MARGOLIUS was called as a witness and testified as follows:

Direct examination by Mr. THOM:

Q. Please state your name and residence.

A. My name is Benjamin Margolius; I live at Norfolk, Virginia.

Q. Do you know of a concern called the Atlantic Jute Mills?

A. Yes; I am president of the Atlantic Jute Mills.

551 Q. What is their business?

A. Manufacturing bagging.

Q. How long have you been in the bagging business, Mr. Margolius; I mean have you personally had experience?

A. About 20 years.

Q. Have you experienced any difficulty in obtaining cotton ties in the years 1915, 1916, and 1917?

A. The Atlantic Jute Mills were in operation only a part of 1916; it is a new corporation, organized last year, and they only had—

Q. You mean 1916?

A. I mean 1916, and had only a partial year's business. In 1917, this year, our first full year, we made every effort to obtain ties from the manufacturers and did not succeed in buying a single bundle.

Mr. BIGGS. That is 1917 you speak of?

The WITNESS. 1917.

By Mr. THOM:

Q. From whom did you make efforts to buy cotton ties?

A. We made efforts to buy them from all the manufacturers.

552 Q. Did you make any efforts to buy them from Warren, Jones & Gratz?

A. From Warren, Jones & Gratz, too.

Mr. BIGGS. Your Honor, I think necessarily what efforts he made must have been by correspondence.

Mr. THOM. We will proceed along those lines right now, Mr. Biggs.

Mr. BIGGS. All right, sir.

By Mr. THOM:

Q. I hand you a telegram, dated May 17, 1917, addressed to the Atlantic Jute Mills, Incorporated, from Warren, Jones & Gratz, and ask you if that was received by you upon that date in due course of business?

A. It was.

Mr. THOM. I offer that telegram in evidence.

(The telegram was marked "Margolius Exhibit 1," received in evidence, and reads as follows:)

(Postal-Telegraph-Cable Company blank.)

5nyf 925 pm 11 nite.

a ST. LOUIS, MO., *May 17, 17.*

ATLANTIC JUTE MILLS, INC.,
Norfolk, Va.

Telegram received; sorry but can not offer you any ties at present.

WARREN, JONES & GRATZ.

553 Q. I hand you two telegrams and a letter, one telegram dated June 28, 1916, from the Southern Bagging Company to Warren, Jones & Gratz; another telegram dated June 29, 1916, to the Southern Bagging Company from Warren, Jones & Gratz; and a letter dated August 24, 1916 to the Southern Bagging Company from Warren, Jones & Gratz. I ask you whether those were received by the Southern Bagging Company—are you connected with the Southern Bagging Company also?

A. Yes, sir; I am a member of the firm.

Q. Will you state if those were received by the Southern Bagging Company in due course of business and around about that date?

A. They were.

Q. Will you please state for whose benefit those ties were asked for?

A. For the Atlantic Jute Mills.

Mr. THOM. I offer the two telegrams and the letter in evidence.

(The papers referred to were marked "Margolius Exhibits 2, 3, and 4," received in evidence, and are as follows:)

554 (Western Union telegram blank.)

NORFOLK, VA., *June 28, 1916.*

WARREN, JONES & GRATZ,
St. Louis, Mo.

Kindly quote us cotton ties.

SOUTHERN BAGGING CO.

Paid (charge).

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554 (Western Union telegram blank.

128W DU 9.

ST. LOUIS, MO., *1.40 p. m., June 29, 1916.*

SOUTHERN BAGGING CO.,
Norfolk, Va.

Telegram received; have no ties to offer at present.

WARREN, JONES & GRATZ.

2.55 p. m.

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555 (Letterhead of Warren, Jones & Gratz.)

ST. LOUIS, MO., *August 24, 1916.*

SOUTHERN BAGGING COMPANY,
Norfolk, Virginia.

DEAR SIRS: Your letter of the 24th:

Note you are in the market for 3,000 bundles ties. At present we can not offer you any ties.

Yours, very truly,

WARREN, JONES & GRATZ,

HRM. M.

By Mr. THOM:

Q. Now, Mr. Margolius, about how much bagging does the Atlantis Jute Mills manufacture?

A. About a million and a quarter yards a year.

Q. Does it manufacture any ties?

A. No ties.

556 Q. What effect dies the inability to have ties have on the sale of the bagging?

A. The selling season in bagging and ties is a very short one. When the market is opened, and by that I mean when the leading manufacturers, of which we are not one, establish their prices, generally in May or June, why there is a scramble to sell bagging and ties, and within a few days following, a week or two or three, practically all the bagging that will be used in the course of that year is sold or booked. When the market opened this year our salesman—

Q. Before you get to that point, as I understand it about the time the market opens all bagging manufacturers endeavor to make their contracts for the season?

A. To sell their output for the season, yes.

Q. If they are unable or have difficulty in getting the necessary number of ties to go with their bagging they are handicapped at that time in making their contracts?

A. They either cannot sell it or have to sell it for less than the value.

Q. Will you please state whether you have been affected by your inability to secure cotton ties in the years 1915, 1916, and 1917? I believe you said you were not in the year 1915, but in 1916 and 1917?

557 A. Yes; our business has been affected this year.

Q. You mean last year?

A. I mean in 1917.

Q. This is 1918.

A. Yes, in 1917, in the past year.

Q. In what ways was your business affected?

A. Well, when the market opened in 1917 our salesmen and representatives were given the market prices for bagging and they immediately notified us that they could not effect sales, that they had no ties to offer, that competitors, that some one else was selling bagging and ties, and the trade would not buy one without the other. A few days passed, and not booking any orders, why we reduced our price somewhat to be able to book up orders because we had a considerable volume of money tied up in the goods, and that not having the desired effect, we instructed our salesmen to sell ties at the market price to go with our bagging so that we could sell our bagging, and we would take the chances of getting the ties afterwards, which we proceeded to do.

Q. Does your trade want second-hand ties?

A. No, our trade will not have second hand ties. Our trade is largely here in North Carolina, the eastern section, where the

558 will not use second hand ties, or spliced ties, unless absolutely that new ties can not be had. Certainly we could not sell our bagging if we only had second-hand ties to go with it.

Q. Were you able to get ties later in the season after the market opened?

A. Some ties, not what we required, but we bought some ties, not from manufacturers, though.

Q. With your experience of 20 years in the bagging business——

A. Let me correct that one second. We did buy 10,000 bundles of ties through the Southern Bagging Company from the manufacturers.

Q. You said you bought not as much as you wanted or needed?

A. Yes, sir.

Q. With your experience in the bagging business, will you please state what a continuance of your difficulties to obtain cotton ties would mean in your business?

A. Why, we would be driven out of business or we would be forced to establish a tie mill to manufacture new ties.

Cross-examination by Mr. Biggs:

Q. What is the Southern Bagging Company, Mr. Margolius?

A. The Southern Bagging Company is a partnership, consisting of my brother and myself.

559 Q. What is their business; what do they do?

A. They handle second-hand bagging and ties.

Q. How long have they been in that business?

A. 18 to 20 years.

Q. The Atlantic Jute Mills is another separate concern, is it?

A. Yes, sir.

Q. Owned by you and your brother, too?

A. No.

Q. That is a corporation?

A. That is a corporation, yes.

Q. You are president of it?

A. I am president.

Q. When did that concern begin manufacturing bagging—the Atlantic Jute Mills?

A. 1916.

Q. What time in 1916?

A. About the middle of the year, before they commenced to operate.

Q. That was after the season had opened and after the people had bought their bagging and everything for the year 1916; is that not true? You just testified they usually buy it and sell it at the beginning of the season.

560 A. Well, our mill started cutting out a small quantity of stuff about March.

Q. Had you anything out?

A. Manufacturing a small quantity of goods about March.

Q. Well, did you do a business that year, sell your bagging; the Atlantic Jute Mills, I mean.

A. We sold some of our bagging.

Q. You got started late in the season and you carried over bagging into 1917, did you not?

A. Yes.

Q. How much did you carry over?

A. We carried over about one-half million yards.

Q. The Atlantic Jute Mills, as I understand you to say, did not make any request from Warren, Jones & Gratz for ties; you did that through the Southern Bagging Company; your telegrams indicate that, do they not. Some of those telegrams, I believe, are from the Atlantic Jute Mills and Southern Bagging Company.

Mr. THOM. Some from the Southern Bagging Company, some from the Atlantic Jute Mills.

A. Both the Atlantic Jute Mills and the Southern Bagging Company.

561 Q. When did the market open that year, do you know—what year was that, 1918?

A. 1917; May, 1917.

Q. When did the market open?

A. I think in May, just about that time.

Q. Well, now, the Southern Bagging Company manufactures ties, too, does it not?

A. Second-hand ties.

Q. And they do that for the Atlantic Jute Mills?

A. No; on their own account.

Q. But the Southern Bagging Company furnished second-hand ties to the Atlantic Jute Mills to go with their bagging, did they not?

A. No.

Q. Where did the Atlantic Jute Mills buy its ties; buy its second-hand ties?

A. The Atlantic Jute Mills did not handle any second-hand ties, new ties, and rewoven bagging.

Q. You have really only entered business since 1917?

A. Yes.

Q. And you carried over one-half million yards of your product of 1916?

562 A. Yes.

Q. You bought 10,000 bundles, you say, or the Atlantic Jute Mills did?

A. Yes.

Q. From the manufacturers?

A. From the Pittsburgh Steel Company.

Q. The Southern Bagging Company, the concern you have told about here, that has been in business for some time here, has it not?

A. Yes, sir.

Q. And you and your brother are partners in that business?

A. Yes, sir.
Q. And they make bagging, too?
A. Second-hand bagging and ties.
Q. What do they make their bagging out of?
A. Second-hand bagging.
Q. Well, do they buy any old gunny?
A. Yes. The Southern Bagging Company does a comparatively small business.
Q. They have been in business how long?
A. About 18 or 20 years.
Q. It has always been just you and your brother in that business?
563 A. Yes, sir.
Q. There is another concern here, is there not, in the bagging business, too—the Imperial Bagging Company?
A. I believe so.
Q. What concern is that?
A. I have no connection with it.
Q. Do you know who has?
A. A Mr. I. Margolius.
Q. Is his name Margolius, too?
A. Yes, sir.
Q. They manufacture second-hand bagging, too?
A. I don't know anything about their business.
Q. Is that Mr. Margolius any relation of yours?
A. He is a relation, a cousin.
Q. These ties in 1917, you bought them, as I understand; you bought what you needed for your business in 1917?
A. No; we could not secure what we needed.
Q. What efforts did you make outside of what you have testified to here in sending telegrams to Warren, Jones & Gratz?
A. I made every effort to buy them. I tried to buy them from the Atlantic Steel Company through Connors-Weyman Steel Com-
564 pany, through Pittsburgh Steel Company, Warren, Jones & Gratz, the Sharon Steel Company, or anybody I knew in the business or had ever been in it.
Q. They all declined to quote you?
A. They all declined to quote us.
Q. Did they give you any reason?
A. No.
Q. They simply declined to quote you?
A. There are some of the telegrams there.
Q. Did you sell any of your product this season before the market opened?
A. If I sold any, it was an insignificant quantity.
Q. You did not have ties at that time, did you?
A. No, sir.
Q. You sold them without ties?

A. We sold them; I said it was an insignificant quantity. I do not remember or recall that we sold any before the market opened.

Q. In 1917?

A. In 1917.

Q. You say this Southern Bagging Company that is mentioned here and under which you and your brother have been doing business, they usually bought old—made their material out of
565 old bagging and out of old gunny?

A. Yes.

Q. Where did you usually buy that?

A. From the cotton mills.

Q. Did you buy it in New England?

A. Yes.

Q. You have been doing that for a great many years?

A. Yes.

Q. From the cotton mills in New England?

A. Well, from anyone who had gunny bagging to sell. We do not limit it as to whom we buy it from.

Q. In laying in your supply of bagging, I mean of raw material from which you manufacture your bagging, was it your custom to contract for this supply of gunny or old bagging which you were going to use in advance of the season?

A. No; it was not.

Q. You never did that?

A. It was not our custom to do it.

Q. How did you buy it; just as the season goes on?

A. We bought it as we needed it.

Q. At any time in your business have you bought it, con-
566 tracted it in advance at a price?

A. We have done that.

Q. You did that, did you not, in 1907 and 1908?

A. I believe so.

Q. And you made contracts for the purchase of this material very extensively, did you not, throughout the New England States?

A. I think so in 1908, 1906, and 1907; at that time we did a very large business in secondhand bagging.

Q. Is it not true that either in 1907 or 1908 that your concern, the Southern Bagging Company, had large, extensive contracts for the purchase of gunny and secondhand bagging throughout the Northeastern States; that that was contracted for by your concern at a price; and that later on the market price broke and you refused to take any part of the bagging that you contracted for?

A. No; I deny that.

Q. You say that did not happen in any instance?

A. We have not refused to take any bagging that we bought under contract.

Q. I mean bagging material, gunny or old secondhand, old bagging?

567 A. Yes.

Q. You have not refused to take that you bought under contract?
A. No.
Q. In any year that you did business?
A. Not that I recall.
Q. That did not happen in either 1906, 1907, or 1908?
A. No.
Q. Your concern has not done any business with Warren, Jones & Gratz for a good many years?
A. No.
Q. When did you do any business with them?
A. I do not recall that we ever did any business with them.
Q. They have always refused to do business with you, have they not?
A. Yes, I beg your pardon, we have done business with them.
Q. When?
A. I recall only one year, whether 1906, 1907, or 1908, when we purchased any cotton ties from Warren, Jones and Gratz. I believe they were purchased through the American Manufacturing Company. The contract, I think, was signed by Warren, Jones
567½ & Gratz. In fact, I am positive of that and they have never refused to sell us as far as I have ever known other than they might have stated that they had no goods to offer, but they have never refused to sell us that we are aware of it, otherwise I would never have asked them for quotations.
Q. You say a number of these places all over the country, the Atlantic Steel Company, Connors-Weyman concern, the Pittsburgh Steel Company, and the Carnegie Steel Company from which you tried to buy ties, how do you explain that all these people refused to sell you ties?
A. I think I can explain that very easily. There is an arbitrary price on cotton ties fixed on the basis of f. o. b. Pittsburgh. The freight is added to all points and the ties are sold at a delivered price. It therefore follows that a mill located at Atlanta or Birmingham must sell their ties in their immediate section if they are to get the benefit of the freight on the ties, inasmuch as ties are high at those points because to the price from Pittsburgh the freight is added. It therefore follows that a mill in Birmingham or in Atlanta cannot or will not sell ties, or cannot to their financial advantage sell ties except in that territory where the freight is in their favor. It there follows, and in our territory, North Carolina,
568 where we sell our bagging, ties must come from Pittsburgh or the Pittsburgh section, the mills in Alabama or Georgia will not sell ties delivered in North Carolina because the difference in freight is too much against them. We, therefore, have no one to look to for our ties except to the Pittsburgh Company or the Carnegie Steel Company.
Q. Do you know that the Atlantic Steel Company, or Connors-Weyman Company refused to do business?

A. Refused to do business?

Q. In this country?

A. Yes, I know that. They do not refuse to sell us ties if we need them for delivery in that territory. They have offered us ties.

Q. How about Texas and that country out there; they do business out there, do they not?

A. Not unless there is a famine in cotton ties and Texas cannot get their ties from Pittsburgh, their natural territory. They do not try to sell any ties, and frequently will not accept an order from you for ties. They will not ordinarily accept an order for ties for shipment to Texas.

Q. You would be surprised, would you not, to know that those concerns sold 25 per cent of their product in Texas?

569 A. Yes, I would be surprised.

Q. If a man comes on the stand here, connected with these manufacturing concerns and testifies to that fact, he knows something more about that than you, does he not?

A. I qualified my statement by saying unless there was an unusual shortage of ties, as there was partly during the past year or two, when the trade would take them at any price and manufacturers, like Pittsburgh, could get any price, of course they sold them in Texas; but I am speaking of normal conditions prevailing; they do not sell any ties in Texas.

Q. Are you well enough acquainted with the condition of the market on ties to say whether or not the Carnegie Company has been in the habit of advancing their price on ties during the season?

A. Yes, I am somewhat acquainted with the steel and iron market, as I handle large quantities of steel and iron outside of the cotton ties. What is the direct question?

Q. Do you know in the trade, are you able to say whether or not, are you familiar enough with the market conditions to say whether or not the Carnegie Company advanced the price of its ties during the season on account of scarcity or from any other reason?

570 Well, the Carnegie Steel Company has not quoted us any price on ties, so——

Q. You are not familiar with that?

A. Not absolutely familiar with what they have done. I know the ties have not been advanced during the season to the trade. They have been able to buy ties all the year at virtually the same price other than the little carrying charges.

(The witness was excused.)

(Whereupon, at 2 o'clock p. m., an adjournment was taken subject to further notice.)

571 **Federal Trade Commission v. Warren, Jones & Gratz.**
Docket No. 12.
Pittsburgh, Pa., Jan. 25, 1918.

572 **Before the Federal Trade Commission.**

FEDERAL TRADE COMMISSION, vs. WARREN, JONES & GRATZ ET AL. } Docket No. 12.

PITTSBURGH, PENNSYLVANIA, *January 25, 1918.*

The above entitled matter came on for hearing, on notice, before Special Attorney George McCorkle, sitting as examiner, at 1.15 o'clock.

Present: Mr. Alfred P. Thom, jr., special attorney on behalf of the Federal Trade Commission.

Davis Biggs, Esq., appearing for and on behalf of Anderson Gratz, Benjamin Gratz, and Charles C. Elmer, one of the respondents.

JAMES J. CAMPBELL was called as a witness and, being first duly sworn, testified as follows:

Direct examination by Mr. THOM:

Q. What is your name?

573 A. James J. Campbell.

Q. Your residence?

A. My residence is Beaupont, Pennsylvania.

Q. Your occupation?

A. Auditor, Carnegie Steel Company; also assistant secretary.

Q. Your place of business?

A. Carnegie Building, Pittsburgh.

Q. Pennsylvania?

A. Pennsylvania.

Q. Mr. Campbell, will you please give a brief summary of your duties as auditor?

A. I have entire control of the accounting and bookkeeping and record making of the company in my official position as auditor.

Q. In that connection, you are familiar with the output or production of cotton ties of the Carnegie Steel Company?

A. Yes, sir.

Q. Are you familiar with the output of cotton ties of the Carnegie Steel Company for the years 1915, 1916, and 1917?

574 A. Yes, sir.

Q. Will you please state what they were?

A. Production output?

Q. What is the production of the Carnegie Steel Company for those years, namely, 1915, 1916, and 1917?

A. For the year 1915 we produced 26,374 gross tons, the equivalent [illegible] bundles.

208,624

In 1916 we produced 19,973 gross tons, the equivalent of 991,506 bundles.

For the year 1917 we produced 23,201 gross tons, the equivalent of 1,170,887 bundles.

Q. When you give those as your figures, does that include all of the plants in which cotton ties were manufacture?

A. Yes, sir.

Q. Will you please state the number of plants you have in which cotton ties are made?

A. In these years we made cotton ties at the Painter Mill, which is located on the south side of Pittsburgh; the Upper Union Mills, at Youngstown, Ohio.

Mr. THOM. The witness is with you.

Mr. BIGGS. I have no questions to ask Mr. Campbell.

575 Mr. THOM. I will call Mr. Skinner.

(Witness excused.)

JAMES H. SKINNER was called as a witness and, being first duly sworn, testified as follows:

Direct examination by Mr. THOM:

Q. Will you please state your name?

A. James H. Skinner.

Q. Your residence?

A. Pittsburgh, Pennsylvania.

Q. Your occupation?

A. I am a clerk in the sales department, general sales office, general office building, Pittsburgh.

Q. Did you state what company?

A. The Carnegie Steel Company.

Q. And their general offices are where?

A. In Pittsburgh, Pennsylvania.

Q. What building?

A. The Carnegie Building.

Q. Will you please state what your duties are with the Carnegie Steel—a brief résumé of them?

576 A. Sir?

Q. A brief résumé of them?

A. I am in the sales department and have principal charge of the distribution of cotton ties. I also inspect the product at the mills, and make some sales.

Q. Do you know a firm by the name of Warren, Jones & Gratz?

A. Yes, sir.

Q. Are you familiar with their relationship to the Carnegie Steel Company?

A. Yes, sir.

Q. Will you please state it.

A. Warren, Jones & Gratz are selling agents for the Carnegie Steel Company, on cotton ties.

Q. Are you familiar with the percentage of the output of cotton ties of the Carnegie Steel Company for the years 1915, 1916, and 1917, sold to or through Warren, Jones & Gratz?

A. Yes, sir.

Q. Will you please state the percentage for those years?

A. The percentage, reduced to figures, is for the year 1915, 99.95 per cent; 1916, 99.85 per cent; 1917, 98 per cent.

Q. Mr. Skinner, are you familiar with the different plants in Youngstown, Ohio, not only your concern, but other concerns—familiar with what is produced in those plants?

A. Yes, sir; I believe I am.

Q. Is the Carnegie Steel Company the only company that manufactures cotton ties in Youngstown, Ohio?

A. Yes, sir.

Mr. THOM. The witness is with you.

Cross-examination by Mr. BIGGS:

Q. Mr. Skinner, the ties that are produced by the Carnegie Steel Company, as I understand from you, are sold through the firm of Warren, Jones & Gratz?

A. Yes, sir; practically all of them.

Q. You are familiar, are you, with the amount of ties that was sold by them at various times during the year 1916?

A. Yes, sir.

Q. Take the year 1916, can you give the date on which the market opened on the sale of cotton ties?

A. 1916?

Q. Yes, sir.

Mr. THOM. Now, Mr. Examiner, it appears to me that Mr. Biggs is not cross-examining on points brought out on the direct examination, and while I have no objection to his taking any testimony he desires from Mr. Skinner at this time, I wish it to be noted on the record that in doing so he makes him his witness.

The EXAMINER. I think it is responsive to the examination in chief. I think it is in line with that, so far.

Mr. BIGGS. I have no objection to making Mr. Skinner my witness as far as that goes.

The EXAMINER. In case he goes further on, you have the privilege of cross-examining him on that.

Mr. BIGGS. We have had a good many hearings, I think, where we have digressed from what was developed on the chief examination. I have no objection to making him my witness if Mr. Thom wants me to.

The EXAMINER. Proceed.

By Mr. BIGGS:

Q. Will you give us that date, Mr. Skinner?

A. The market opened June 26, 1916.

Q. Can you give us the amount, in bundles of ties, that had been produced by your company, up to June 30, 1916—that is, that year?

A. The amount is 688,643 bundles.

Q. Can you give us, in bundles, the number of ties that were sold for your account by Warren, Jones & Gratz up to June 30, 1916?

A. The amount was 682,722 bundles, June 30, 1916.

Q. Now, can you give us the amount of ties, in bundles, that were produced by your company during the month of July, 1916?

A. We produced in July, 1916, 121,249 bundles.

Q. Will you give us the number of ties that were sold by Warren, Jones & Gratz up to July 31st, 1916?

A. On July 31st, 1916, they had sold 1,363,478 bundles.

Q. Can you tell us whether or not, in the year 1916, your company sold P. P. Williams & Company, Vicksburg, any cotton ties?

A. No, sir; they did not.

Q. Now, Mr. Skinner, are you able to tell us whether or not during the years 1916 and 1917, and the year 1915 also, it would have
580 been more profitable for your company to have used its mills in manufacturing products other than the manufacture of cotton ties?

A. Yes, sir; it would have been.

Mr. Biggs. That is all, Mr. Thom.

Mr. Thom. No questions. I will call Mr. McKinley.

(Witness excused.)

Ernest McKinley was called as a witness, and being first duly sworn by the examiner, testified as follows:

Direct examination by Mr. Thom:

Q. State your name, please.

A. Ernest H. McKinley.

Q. Your residence?

A. Pittsburgh, Pennsylvania.

Q. Your occupation?

A. I am sales agent for the Pittsburgh Steel Company.

Q. Where are the Pittsburgh Steel Company's general offices?

A. In the Union Arcade, Pittsburgh, Pennsylvania.

581 Q. Will you please state what your duties are with the Pittsburgh Steel Company?

A. I have charge of certain territories, selling products, among them cotton ties.

Q. In connection with your duties, are you familiar with the output of cotton ties of the Pittsburgh Steel Company for the years 1915, 1916, and 1917?

A. I am.

Q. Will you please state the output of the Pittsburgh Steel Company for the years 1915, 1916, and 1917?

A. Now, do you mean our shipments or production?

Q. I mean your production.

A. In 1916 we produced 183,764 bundles.

Mr. Biggs. That is 1916?

Mr. Thom. 1915, first.

The Witness. 1915, was 249,985 bundles.

Q. And the year 1917?
A. 1917, 210,585 bundles.
Mr. THOM. The witness is with you, Mr. Biggs.

Cross-examination by Mr. BIGGS:

Q. Mr. McKinley, during the last couple of years with your business, has it been your idea to manufacture each year a particular amount of ties, or how is it that you do your business? Do you sell your ties just to particular customers that you have?

A. We have regular customers, and we have tried in the past years to take care of them on the same basis that we previously did.

Q. Has that been the extent of your aim in that regard, as far as your production went?

A. Yes, sir.

Q. Then you have not tried to spread out your business, and make more ties and market more ties? You simply aimed to take care of your particular customers?

A. Yes, sir; it has been unprofitable to take care of them.

Q. If you did not, you could have used your mills to manufacture other products that would have been more profitable than the manufacture of cotton ties?

A. Yes, sir.

Q. You are not, in other words, at all ambitious in the cotton tie business?

A. No, sir.

Q. And one of those customers that you have been in the habit of supplying is the Carolina Bagging Company, of Henderson, North Carolina?

A. Yes, sir.

Q. Do you know of a concern called the Dixie Manufacturing Company, of Norfolk, Virginia?

A. I don't think we have ever sold them.

Q. Do you know of that concern?

A. I do not know them personally.

Q. John S. Jenkins & Company, Norfolk?

A. No, sir.

Mr. BIGGS. That is all, Mr. McKinley.

Redirect examination by Mr. THOM:

Q. Mr. McKinley, when did you state that the cotton tie business was unprofitable? Do you mean that you lost on the manufacture of cotton ties, or it was not as profitable as other portions of your business?

A. I mean by that that we could have sold hoop steel, which is made in the same mills, at a higher price than we could cotton ties.

Q. And not necessarily that there was a loss on the sale of your cotton ties?

A. Oh, no; I don't think so.

Mr. THOM. That is all I wanted to bring out. That is all, Mr. McKinley. We are very much obliged to you.

I think at this point the Federal Trade Commission will rest th direct testimony.

Mr. Biggs. Well, that being the case, your honor, I want the reco to show that at the close of the Government's case respondents re quest the examiner to find the facts as developed by the testimon and recommend to the Federal Trade Commission that no order b made against the respondents, for the reason that the evidence fai to substantiate the charge made in either count of the complain there being absolutely no evidence pretending to establish the charg contained in the second count, and the alleged evidence introduc to substantiate the first count being wholly insufficient.

The Examiner. That does not indicate that you are not going t introduce any further evidence?

Mr. Biggs. Oh, no. I want the record to show that, your honor.

The Examiner. That is all right.

585 Mr. Biggs. As to the second count of this complaint, it m be matérial to ask Mr. Thom if you consider that there is an evidence here in substantiation of that?

Mr. Thom. I do.

The Examiner. That is all for the examiner to look into, on th testimony.

Mr. Biggs. I understand that. Now, if the examiner please, in re erence to the respondent's side of this case we are not at this pa ticular time prepared to say when we would like hearings in th matter, but I presume that is a matter that could be arranged f with you, or with the secretary of the Trade Commission.

The Examiner. That probably can be arranaged with both of us with the secretary and with myself. That is when you express yo desires, of course it is something that I would take up with the sec tary or with the chief counsel, Mr. Walsh.

(Whereupon, at 10.30 a. m., January 25th, 1918, the hearing w adjourned subject to the call of the Commission.)

586 Before the Federal Trade Commission.

Federal Trade Commission v. Warren, Jones & Gratz et al.	Docket No. 12.

St. Louis, Mo., February 18 and 19, 1918.

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FEDERAL TRADE COMMISSION
v.
WARREN, JONES & GRATZ, ET AL.
Docket No. 12.

ST. LOUIS, MISSOURI, *February 18, 1916.*

Met pursuant to notice at 10.20 a. m.

Before George McCorkle, examiner.

Present: W. T. Roberts, special attorney, and Alfred P. Thom, jr., attorney and examiner, Federal Trade Commission.

Davis Biggs, Esq., appearing for and on behalf of Anderson Gratz, Benjamin Gratz, and Charles O. Elmer, one of the respondents.

W. H. FITZHUGH, called as a witness on behalf of the defendants, being duly sworn, was examined and testified as follows:

Direct examination by Mr. BIGGS:

Q. Mr. Fitzhugh, will you please state your full name, your business, and your residence?

A. W. H. Fitzhugh, managing partner P. P. Williams & Company, Vicksburg, Miss.

Q. You are one of the respondents in this proceeding?

A. I am.

Q. Who are the members of the firm of P. P. Williams & Company?

A. W. H. Fitzhugh of Vicksburg, and Alexander Fitzhugh, formerly of Vicksburg, but now at Camp Hancock, Augusta, Georgia, a captain in the Army.

Q. How long have you been in this business, Mr. Fitzhugh?

A. For twenty-seven years.

Q. All the time at Vicksburg?

A. All the time at Vicksburg.

Q. What is the character of your business in a general way?

A. We do a general jobbing business, a wholesale grocery business, handling bagging and ties, grain, provisions, flour, and meal; building material, such as lime and cement, and a general line of groceries.

Q. You handle a number of commodities, outside of bagging and ties?

A. We handle some seventy odd commodities in carloads—different commodities.

Q. Now, in conducting your business, in a general way, give us the extent of the territory which you cover in your general business.

A. Well, we reach from San Antonio on the west, to Chicago and Kansas City on the north; to Cincinnati, Richmond, Virginia, and to intermediate points.

Q. Where does your concern sell bagging and ties, principally?

A. It is sold principally in the States of Mississippi, Louisiana, Arkansas, and Alabama; some in Texas and some in Georgia.

Q. What was the volume of your business in bagging and ties, in 1915, approximately?

A. The total volume—I can get at that approximately. The total volume of our business in 1916 was $2,100,000.

Q. Well, what does that mean?

A. Now, of my business, there was about 6 to 7 per cent was bagging, and from three-quarters of one per cent to two per cent is represented by ties.

591 Q. You represent, do you not, Warren, Jones & Gratz in the selling of bagging and ties?

A. We have represented them for eighteen or twenty years.

Q. Give us, if you can, the amount in bundles of ties and yards of bagging that you handled and sold in 1916 and 1917.

A. In the year 1916 we sold 52,000 bundles of ties. In the year 1917 we sold 56,000 bundles of ties. Now, in 1916 we sold 1,538,000 yards of bagging, and in 1917 we sold 1,810,000 yards of bagging.

Q. Now, in your answer filed in this proceeding, Mr. Fitzhugh, you deny that you sell and distribute your product principally to jobbers and dealers, who resell to retailers, cotton ginners, and farmers, and affirm that you sell equally to retailers, cotton ginners, and farmers as well as to jobbers and dealers. What is the fact about that?

A. I have a staetment showing the sale of every yard of bagging and every bundle of ties during the years 1916 and 1917. In the 1916 statements included here, there are 45 pages of these, and 28 to 30 lines on a page, and I figure that there are——

592 Mr. Biggs. I might say, Mr. Roberts, that these statements are here, if you want to see them. They are very voluminous and rather than put them in the record, I will ask you to let the witness state from those what matters we desire.

Mr. Roberts. Very well. We can look at them.

The Witness. My statement shows that we sold bagging and ties to from 650 to 700 different customers in 1916 and 1917.

Mr. Thom. Both years?

The Witness. Each year, 650 to 700.

By Mr. Biggs:

Q. Now, I will ask you before I get on that subject, what compensation does your concern receive from Warren, Jones & Gratz for selling ties?

A. One and one-half cents per bundle.

Q. How much money were you paid by Warren, Jones & Gratz for selling ties in 1916. You say you sold 52,000 bundles?

A. At 1½ cents a bundle, $780.

Q. How much in 1917? You sold 56,000 that year.

A. One and one-half cents a bundle, $840.

593 Q. Now, state what per cent of your profits—what these sums that you have just mentioned paid you for selling ties amounted to in 1916?

A. In 1916, about one per cent.

Q. How about 1917?

A. In 1917, about three-quarters of one per cent.

Q. Now, go back to the other question. Will you show by your statements, and make any statements you desire to make in reference to the questions that you sell not only to jobbers and dealers, but you also sell to ginners and farmers.

A. My statement shows in number of customers that about 90% of my sales were to consumers and retailers and ginners, and about 10% were to dealers or jobbers. It shows further here, as I said just now, that we had from 650 to 700 customers of bagging and ties, each year, 1916 and 1917. It shows furthermore that the percentage of the number of ties sold to dealers is about 60 per cent, and to retailers and ginners about 40 per cent.

Q. You have those statements here. Do you include for the two years every trade that you made in bagging and ties?

594 A. Every single bundle of ties and every roll of bagging.

Q. And you produced them here, did you, for the use of the Commission or the attorneys for the Commission, or anybody else who wants to see them, and are willing to put them in the record if they desire to?

A. I shall be glad to leave them, not only for those years, but for 1914 and 1915, which I happen to have with me.

Q. Now, you further set forth in your answer, Mr. Fitzhugh, that in these several past years that you sold and distributed large quantities of bagging not made by the American Manufacturing Company, and not controlled by or gotten from said American Manufacturing Company, or said Warren, Jones & Gratz. Now, will you take, if you can, from the years 1914, 1915, 1916, and 1917, and state what the facts are in reference to the bagging that you handled, and whose bagging you handled giving the amount?

A. In the year 1914 I sold 800,000 yards of Calcutta bagging.

Q. What is Calcutta bagging?

A. Calcutta bagging is a bagging made in Calcutta and imported by us. It is a high-grade bagging.

595 By Mr. THOM:

Q. What year was that?

A. In the year 1914 I sold 800,000 yards of Calcutta bagging and 1,800,000 yards of American bagging. In round figures that is 30 per cent of Calcutta and 70 per cent of American bagging. In 1915 I sold 250,000 yards of Calcutta bagging and 1,500,000 yards of American bagging. The percentage in round figures is 14 per cent of Calcutta bagging and 86 per cent of American bagging. In 1916 I sold 70,000 yards of Calcutta bagging and 1,468,000 yards of American bagging. The percentage in round numbers is 5 per cent of Calcutta bagging and 95 per cent of American bagging. In 1917 I sold 60,000 yards of Hub bagging, made by the Ludlow Manufacturing Company, and 1,730,000 yards of American bagging. The percentages in round numbers on that are 3½ per cent of Hub bagging and 96½ per cent of American bagging.

By Mr. Biggs:

Q. Now, will you explain the reasons why, following 1915, you did not handle the Calcutta bagging?

A. Because I could not get it. No Calcutta bagging could
596 be imported during 1916 and 1917, on account of the scarcity of——

Q. War conditions?

A. On account of war conditions, and if you had imported any it would have cost two or three times the price of American bagging and would have been practically unsalable at the price.

Q. I will ask you in reference to the Calcutta bagging and this other bagging you handle. Did the firm of Warren, Jones & Gratz or the American Manufacturing Company know the fact that you were selling this bagging, and if they did, did they object to it in any way?

A. They knew all about it. In fact, Mr. Gratz helped me to get it.

Q. Which Mr. Gratz?

A. Mr. Anderson Gratz, of New York, helped me to buy this Calcutta bagging. He told me that he thought it would be very well for me to buy it and have it; that it was going to be sent over here—going to be imported here and we had a trade that wanted Calcutta bagging. Down there where we are located there is a great deal of staple cotton raised, which commands a high price, and there
597 is a better demand for the higher grades of bagging, and he said he thought we would do well to buy this bagging. He had no objection to it in the world and helped me do it. He told me how I could buy it, from whom, and wherever the parties who had it for sale—the brokers in New York—and I bought it through his instrumentality.

Q. Now, have you any contracts in your possession, or correspondence, showing that you purchased this Calcutta bagging?

A. I have a copy of a contract I made with Reilly Brothers, a New York firm of brokers, on March 21, 1914, for 425,000 yards of Calcutta bagging. Mr. Gratz put me in communication with Reilly Brothers. Then in January——

Q. Of the same year?

A. 1914, Mr. Gratz telegraphed me that Reilly Brothers would sell us 550,000 yards of Calcutta bagging, if we wanted it, at such and such a price. I wired him at once that we would be glad to have it. That telegram was not delivered for fifteen days. In the meantime, Reilly sold the bagging to some one else, and I am now suing the Western Union Telegraph Company for $7,500, the loss I sustained by their failure to deliver.

Mr. Roberts. I want to call the examiner's attention
598 to the fact that possibly the testimony relating to 1914 would be inadmissible, for the reason that the act was not passed until September of that year, and I do not know just how much of this business was transacted before that date, or after, but for the

part of the year prior to that time, I doubt if it would be admissible, and I think that we ought to make that objection to it.

Mr. Biggs. I do not want to go back too far in this thing, except in a general way. I want to show by this testimony that there was no effort at any time to try to monopolize, or to create or to control anything about this business.

Examiner McCorkle. Just let the objection be noted and proceed.

By Mr. Biggs:

Q. You have this contract that you made here, that you are willing to produce, if desired?

A. I have a copy of it—carbon copy of it.

Q. Now, these purchases that you made in the way of bagging from Calcutta, I will ask you to state whether or not War-
599 ren, Jones & Gratz or the American Manufacturing Company had any interest whatever in those purchases, or made any profit out of them in any way, shape, or form.

A. Not a cent, as far as I know. Mr. Gratz told me he did not.

Mr. Thom. We object, of course, to that hearsay, what Mr. Gratz told him.

Q. Do you know of any that they made? You bought this stuff directly, did you not?

A. I know of none. I bought it direct from Reilly Brothers; paid them for it, and Warren, Jones & Gratz had no further connection with it.

Q. With the trade?

A. With the trade.

Q. That was so in your purchases that you made in 1914, 1915, and 1916, and you bought none, I believe, in 1917?

A. No American. I bought a little of the Ludlow Hub in 1917.

Q. Well, you also say in your answer, Mr. Fitzhugh, that you affirm that you do now sell and for several years past have sold large lots of ties, not made by the Carnegie Steel Company, and not bought from or sold by Warren, Jones & Gratz. State the facts with reference to that.

600 A. Well, in the late winter of 1915, or the early spring of 1916, Mr. Gratz, who comes to Vicksburg twice a year on a hunting expedition, was in my office, and he told me that he thought——

Mr. Thom. Object to any testimony as to what Mr. Gratz told him.

Mr. Biggs. Your honor, I think this is competent evidence in this case. These men are charged here with unfair business methods jointly, and what happened between them at that time in the way——

Examiner McCorkle. The only thing about that is that Mr. Gratz would be the one to prove it by.

Mr. Biggs. No; this is a conversation between these people at that time in reference to the way that they did this business. Now, these three men, the Williams concern, Mr. Elmer, and Mr. Gratz,

are charged jointly with doing this thing. I want to produce correspondence in here that went between these two concerns at that time, and also these conversation that took place at that time, about the way this business was done. I think it is competent evidence.

It is not hearsay. He is detailing a conversation he had,
601 and what he said and what the other man said in reference to the way this business was conducted at that particular time.

Examiner McCORKLE. It is all right.

Mr. BIGGS. I expect to produce Mr. Gratz about that, but I wanted to produce Mr. Fitzhugh also, who can tell what he said.

Examiner McCORKLE. That would make it competent.

Mr. THOM. I still object, your honor, on the ground that the way the business was conducted is shown by the acts in conducting the business. This would only be indicative of an intent, at the most. A person may have an innocent intent, but he may conduct his business in such a way as to be in violation of the law.

Mr. BIGGS. What is the conduct of your business, except what you do at that particular time?

Mr. THOM. Exactly; but not what you say.

Mr. BIGGS. How are you going to do it except by what you say and what you write?

Mr. THOM. Not to each other.

Mr. BIGGS. I think so.

Examiner McCORKLE. Let the objection of the attorney for
602 the Trade Commission be noted, and then I would suggest that it is largely preliminary to what you are arriving at anyhow, and that you do not encumber the record too much with it.

Mr. BIGGS. I am not going to.

Mr. THOM. My desire is not to curb in any way the testimony of the witness, but simply to prevent all immaterial matters of hearsay from encumbering the record.

Mr. BIGGS. We might thresh this out. I have correspondence here that took place between Warren, Jones & Gratz and Mr. Fitzhugh in 1916, 1917, and 1915 with reference to the conduct of this business, and if the conversation is not competent, I presume you contend that is not competent. I think it is perfectly competent to show the manner in which this business was conducted. We want to show everything about it and show exactly what instructions Mr. Fitzhugh received, and what was done about the sale of this product. Proceed, Mr. Fitzhugh.

The WITNESS. Mr. Gratz at that time told me that if any cheap lots of ties were offered, or any ties were offered on the basis of the price which had prevailed during the past season, either new ties or secondhand ties, that he believed it would be a good
603 plan to buy them; that there was undoubtedly going to be a scarcity of ties during the year 1916, and that we would probably need all we could buy for our trade—that is, P. P. Williams & Company would need them. I bought some after that

between eight and nine thousand bundles, compressed or secondhand ties. I bought them of the Gulf Compress Company, some of them at Clarksdale, Greenville, Vicksburg, Mississippi; Rustin, Louisiana; Meridian, Newton, and Jackson, Mississippi. I tried to find some new ties offering, but none were offered.

Q. Now, during the years that you handled and sold these, did Warren, Jones & Gratz have any interest in those second-hand ties—make anything out of the purchase of them?

A. They made nothing whatever out of them. They did not know at what price I bought them nor at what price I sold them. They had no interest whatever in them.

Q. During the time you handled this Calcutta bagging, from whom did you usually obtain your supply of ties, outside of this purchase, to go with that Calcutta bagging?

A. From Warren, Jones & Gratz entirely.

Q. Now, you testified, during 1917, you handled certain quantities of Hub bagging. That is a brand of bagging that
604 is manufactured by the Ludlow Manufacturing Company Associates, of Boston?

A. Boston; yes.

Q. Will you state if Warren, Jones & Gratz knew that you had bought that bagging?

A. Yes, sir; they were advised about all of our purchases. They had no interest in it; made nothing out of it.

Q. The ties that went with that bagging were furnished, were they, by the Warren, Jones & Gratz Company?

A. Warren, Jones & Gratz; yes, sir.

Q. Now, you testified, Mr. Fitzhugh, that you were advised from time to time by Warren, Jones & Gratz to buy other bagging, and so forth. Have you any correspondence with them to this effect?

A. Yes; I have letters from them at various times during 1916 and 1917, in which they advised us——

Mr. ROBERTS. I think the letters will show.

Mr. BIGGS. You had better produce the letter, if you have any letter to that effect.

The WITNESS. I expect to produce the letters. I have them right here in my hand.

605 Mr. BIGGS. They have a right to see the letter.

Mr. THOM. Our point is the letters will speak for themselves.

The WITNESS. Exactly. Is there any objection to reading the letters or reciting from them?

Mr. THOM. I think they should be more logically introduced and then you can do it.

The WITNESS. I have them here.

Mr. BIGGS. See what letters you have there that you want to introduce. Then we will mark them.

The WITNESS. Where did I stop?

(The preceding answer of the witness was repeated by the stenographer as above recorded.)

The WITNESS (continuing). In which they advised us of the impending scarcity of both bagging and ties.

By Mr. BIGGS:

Q. Have you such a letter?

A. I submit their letter of March 9, 1916.

Q. Let it be marked, will you, by the stenographer.

A. May I refer to a part of the things in that letter?

Q. Yes; you can refer to it.

A. In which they said, "Please do not offer any more
606 bagging for the present."

Mr. BIGGS. Let the stenographer mark that, please.

(The letter was marked "Exhibit No. 1," and is as follows:)

"WARREN, JONES & GRATZ,

St. Louis, Mo., March 9, 1916.

Messrs. P. P. WILLIAMS & COMPANY,

Vicksburg, Miss.

GENTLEMEN: We authorized Elmer yesterday to ship 120 50-yard rolls Union bagging for you.

Please do not offer any more bagging for the present. The raw material market is in such shape that we cannot forecast what the price on bagging is going to be. We do not want to sell any at present.

Yours, very truly,

WARREN, JONES & GRATZ."

The WITNESS. On June 24, 1916, after quoting these prices on bagging, they said——

Examiner MCCORKLE. Let the stenographer mark that.

607 (The letter was marked "Exhibit No. 2," and is as follows:)

(Stamp.)

"WARREN, JONES & GRATZ,

St. Louis, Mo., June 24, 1916.

Messrs. P. P. WILLIAMS & Co.,

Vicksburg, Miss.

GENTLEMEN: Jute goods on this order are sold subject to the conditions that the purchaser will not export the merchandise, except as the British Government may permit from time to time and announce, through the Textile Alliance (Inc.), and will resell it only to purchasers who accept and hold it subject to the same conditions.

Effective June 26, our prices on bagging and ties will be as follows:

2 lb. American brand 11¼¢ per yd. f. o. b. St. Louis. 2 lb. American brand 12¢ per yd. f. o. b. New Orleans.

608 2 lb. American brand 12 1/16¢ per yd. f. o. b. Memphis ex W. H. 2 lb. American brand 12¼¢ per yd. f. o. b. Jackson and Meridian.

2 lb. Union brand one-half cent per yard less.

July basis. Later shipment 1/16¢ per yard per month higher for each succeeding month.

Arrow ties------$1.35 per bundle basis f. o. b. Pittsburgh, plus freight per Carnegie Steel Company's freight list for 1916.

$1.48 per bundle f. o. b. New Orleans. $1.47 per bundle f. o. b. Vicksburg. $1.45 per bundle f. o. b. Memphis Ex WH. $1.48 per bundle f. o. b. St. Louis less four cents per bundle special allowance to large buyers.

Bisis July shipment: later shipment ¾¢ per bundle per month higher.

We are willing for you to sell bagging at above prices in limited quantities, up to one million yards, but do not go beyond that figure without reporting to us.

We are also willing for you to sell 30,000 bundles ties at this price, but no more until you receive fresh instructions.

609 Do not sell any ties to anyone without bagging to match, as we do not propose to furnish buyers of sugar bags any ties if we can help it.

You will have to be very careful about sales, as there is a disposition on the part of buyers to overbuy, and as the supply of bagging and ties this year will be limited, we will have to be very careful not to sell too much to any one party at these opening prices. In this way we may possibly be able to control supply and prices to some extent.

All bagging will be sold subject to the regulations and requirements of the British Textile Alliance (Inc.), and purchasers will have to sign a guaranty of purchase.

Yours, very truly,

WARREN, JONES & GRATZ."

By Mr. BIGGS:

Q. That was in the very beginning of the season?

A. The season of 1916.

Q. Now, did the conditions change any in reference to the question of supply of ties? Did you receive any further instructions in reference to selling ties?

610 A. Before I answer that question, let me put in another letter, if you please.

Mr. BIGGS. All right. Go ahead.

The WITNESS. On June 24, 1916, they wrote me a letter, which I submit.

(The letter was marked " Exhibit No. 3," and is as follows:)

" WARREN, JONES & GRATZ,
St. Louis, Mo., June 24, 1916.

LATER.

Messrs. P. P. WILLIAMS & COMPANY,
Vicksburg, Mississippi.

GENTLEMEN: Referring again to ties:

We have set aside for you 60,000 bundles deliverable as follows:

30,000 bundles in July and August.
15,000 " in September.
7,500 " in October.
7,500 " in November.

Based on shipments from the mill and out of Vicksburg stock.

These ties to be sold in every instance only to people who buy at least 30 yards of bagging with each bundle of ties, for the same shipment as the ties.

611 Prices for the present to be basis our letter of this date.

You must be very careful and not let people like Goyer pick you up on ties without a proportionate quantity of bagging.

As to bagging, do not sell over one million yards without further instructions from us, as there is a strong probability of an early advance in both bagging and ties.

Yours, very truly,

WARREN, JONES & GRATZ."

By Mr. BIGGS:

Q. What date was that?

A. That is dated June 24, 1916, marked "Later"—written after that.

I submit the letter which they wrote me on June 24, 1916.

(This letter was marked "Exhibit No. 4," and is as follows:)

"WARREN, JONES & GRATZ,
St. Louis, Mo., June 24, 1917.

P. P. WILLIAMS & COMPANY,
Vicksburg, Mississippi.

612 GENTLEMEN: Last year we sold the Goyer Company a round lot of ties. Please do not sell them any ties this year except with a proportionate quantity of bagging, as every bundle of ties we see in sight will be needed to go with our bagging, and we do not want to supply people with ties who are using bagging purchased of others. Therefore we shall not write Goyer offering them any ties except with bagging.

Yours, truly,

WARREN, JONES & GRATZ."

The WITNESS. That was still at the opening of the season. I called up Goyer Company and told them that we could not sell them ties, as we had done the previous season, when they bought 33,000 bundles at one time, for immediate delivery.

Q. Did you state the reasons why you could not.

A. I stated that we did not have the ties and we could not get them, that only 30,000 bundles had been allotted to me all told, as shown in the preceding letter there, for the months of July and August, and that we were selling ties only to people who
613 bought our bagging. We needed the ties to go along with our bagging. He remonstrated with me and said that was hardly fair to them, as they had bought ties from us or from Warren, Jones & Gratz, for eight or ten years past, and he thought he ought to be protected.

Q. He handled the Ludlow brand?

A. He handled the Ludlaw brand mostly. He had bought a little of ours from time to time. I say a little; that is ten or fifteen or twenty per cent of his normal consumption. I advised him to telegraph Warren, Jones & Gratz, and that I would telephone them also and put it up to them in that way. He did that, and Warren, Jones & Gratz sold him some ties and a small amount of their bagging, and I attach here a copy of a letter I wrote Warren, Jones & Gratz on that subject.

(The letter was marked "Exhibit No. 4–A," and is as follows:)

"6–28–16.

Mr. H. R. MURRAY,

% Warren, Jones & Gratz, St. Louis, Mo.

DEAR SIR: Mr. Taylor of the Goyer Company tells me that you have at last consented to sell him:

614 11,000 bdls. ties.
125,000 yards bagging.

I am glad you did this, and I advised him to send the telegram which he sent you as he seemed to have so much feeling on the subject, and I felt that as he had bought his ties from you or us every year for the past 8 or 10 years that it was up to us to protect him as far as we could. Now, that he has bought this quantity of bagging and ties from you, we will not push him, particularly on ties, in the territory immediately around Greenville, as we had intended to do if he bought elsewhere.

Please keep me posted about what is going on immediately around us. Have you sold all the Meridian people, and have you made any sales at Jackson?

The Monroe Grocery Co. wanted to buy 7,000 bdls. ties from us, stating they had bought York bagging. Did you sell them anything?

Yours, very truly,

P. P. WILLIAMS & Co."

The WITNESS. Here is a letter from Warren, Jones & Gratz, dated July 1, 1916.

615 (The letter was marked "Exhibit No. 4—B," and is as follows:)

"WARREN, JONES & GRATZ,
St. Louis, Mo., July 1st, 1916.

P. P. WILLIAMS & COMPANY.
Vicksburg, Mississippi.

GENTLEMEN: Your letter of the 28th.

We concluded to let Goyer have those ties in order to help him out, and in consequence of having bought from us for many years.

We have sold Threefoot Bros., but no one else in Meridian, and have not sold anything in Jackson. Have sold all of Shreveport with the exception of Ardis who generally buys York.

We sold Monroe Grocery 100,000 yards, and 3,000 ties. They wanted more ties, but we refused to sell them.

Yours, truly,

WARREN, JONES & GRATZ."

Q. That was in 1916.

A. That was in 1916—that was early in 1916.

616 Q. At the opening of the market?

A. At the opening of the market, when the cotton crop was very promising. Now, in two months, the prospects for the cotton crop changed very radically, and I submit here a letter from Warren, Jones & Gratz, dated August 30, 1916.

(The letter was marked "Exhibit No. 5," and is as follows:)

"WARREN, JONES & GRATZ,
St. Louis, Mo., August 30, 1916.

Messrs. P. P. WILLIAMS & COMPANY,
Vicksburg, Mississippi.

DEAR SIRS: Your letter of the 28th.

Your assumption is correct: On account of the short cotton crop we are anxious for bagging and tie business.

With reference to the Borneo bagging: If the prices we have given you are too high to move the goods, reduce the price as we are very anxious to dispose of that lot of bagging this year.

Yours, very truly,

WARREN, JONES & GRATZ."

617 The WITNESS. In this letter they said that my assumption was correct.

Q. Now, Mr. Fitzhugh, I take it that you can accomplish just as much with these letters, if you will just let them be introduced into the record.

A. If you insist on it, I will do it. I would rather give my evidence my own way, if there is no objection, for the reason that I want to show that our policy changed completely in two months.

That in the beginning of the season we though there was every promise of a large cotton crop, and there was every prospect that there would not be—there would hardly be bagging and ties enough to go around, and that idea influenced us in the position we took in June, when we refused to sell everybody all the ties they wanted, and required ties to be sold with bagging or bagging to be sold with ties, but later on, in the same season, when the prospect of the cotton crop was destroyed, we were anxious to sell bagging and ties to anybody that wanted them, and here are my positive instructions to lose no sales of bagging and ties. That point would not necessarily be brought out by those letters to one who was not familiar with the business and did not understand it, and
618 for that reason I desire to give my own evidence in my own way.

Q. Proceed, there has been no formal objection to that.

Mr. ROBERTS. We do not object to the statement he just made.

The WITNESS. I prefer to do it, and it will not be necessary for you to read these letters after you read my evidence, I think. I submit a letter from Warren, Jones & Gratz on August 26, two months after they were restricting me in the prices of bagging and ties in June.

(The letter was received and marked "Exhibit No. 6," and is as follows:)

"WARREN, JONES & GRATZ,
St. Louis, Mo., August 26, 1916.

Messrs. P. P. WILLIAMS & COMPANY,
Vicksburg, Mississippi.

GENTLEMEN: Your letter of the 24th:

619 We note one of your customers asks you to meet prices on bagging and ties made by Graves. The position you take with him is the correct one. There has been no change in price by the manufacturers and the prices made by Graves and some others are with a view of unloading contracts at cost, or even at a loss, rather than carry the goods over into next year. All this has been brought about by the bad reports from the cotton crop, and has gotten the trade generally pretty well demoralized.

While we do not want to disturb prices too much, yet we do not want to lose any business. You have a lot of Borneo bagging on hand, which we are anxious to dispose of. We also have a fair stock of ties in Vicksburg which we must dispose of this year.

Do not fail to allow the 4¢ per bundle off regular price on ties, as this is about all you will be able to get in competition with other markets.

Yours, very truly,

WARREN, JONES & GRATZ."

The WITNESS. Now, I want to submit a letter from Warren, Jones & Gratz, on October 6th, 1916, the same year.

(The letter was marked "Exhibit No. 7," and is as follows:)

620 "WARREN, JONES & GRATZ,
St. Louis, Mo., October 6th, 1916.

Messrs. P. P. WILLIAMS & COMPANY,
Vicksburg, Mississippi.

GENTLEMEN: Your letter of the third:

We note your sale to Brockhaven Cotton Oil Company and the competition you met. You acted exactly right in the matter. The season for the sale of bagging and ties is nearing an end and we must secure all the business possible. At the price you sold Brookhaven Cotton Oil Company, it equals 11¾¢ for American f. o. b. New Orleans, and 11¼¢ for Union f. o. b. New Orleans. You may continue to take business on this basis, and when necessary shade the price a little.

Hold ties firm, as there are no weak spots in the steel situation and we are inclined to think ties will be a good property to carry over.

Yours, very truly,

WARREN, JONES & GRATZ."

621 The WITNESS. And also a letter on October 9, 1916, from Warren, Jones & Gratz.

(The letter was marked "Exhibit No. 8," and is as follows:)

"WARREN, JONES & GRATZ,
St. Louis, Mo., October 9th, 1916.

Messrs. P. P. WILLIAMS & COMPANY,
Vicksburg, Mississippi.

DEAR SIRS: Your letter of the seventh:

Do not shade the price on ties to any one. The steel market is very firm, and we think ties will be good property to carry over into next season, and would not be surprised if the manufacturers would want more money for their ties next year than they asked this year.

Yours, very truly,

WARREN, JONES & GRATZ."

The WITNESS. In this letter they show a complete reversal of the policy given me in their letter of August 28.

By Mr. BIGGS:

Q. Why reversal?

622 A. Because they said in October, 916, "Hold ties firm, as there are no weak spots in the steel situation now and we are inclined to think ties will be a good property to carry over;" and on October 9th they said, "Do not shade the price of ties to anyone. The steel market is very firm and we think ties will be good property." I put that in to show how our policies varied from time to time, just as that of any other merchant does, in view of changed conditions. Now, that was 1916.

Q. Just before you leave that, I want to ask you whether or not you did in fact sell ties without bagging in 1916, while we are on that.

A. We sold a number of ties without bagging, in 1916.

Q. All right.

A. Do you want a list of those now?

Q. No; we will come to that a little later.

A. On May 12, 1917, they wrote me, after first quoting the prices which we should charge for both bagging and ties, that the quantity of American bagging they would have to offer would have to be limited, and the sales of this must be made subject to stock and all sales must be confirmed before closing.

023 (The letter was marked "Exhibit No. 9," and is as follows:)

"WARREN, JONES & GRATZ,
St. Louis, Mo., May 12, 1917.

P. P. WILLIAMS & COMPANY,
Vicksburg, Mississippi.

GENTLEMEN: Some time next week we shall give you prices on bagging and ties, and we think these prices will be as follows:

2 lb.	"American" brand,	13¢	f. o. b. St. Louis.
2 "	" "	13¼	c. a. f. New Orleans.
2 "	" "	13⅜¢	" Vicksburg.
2 lb.	"Union" "	12¢	f. o. b. St. Louis.
2 "	" "	12¼¢	c. a. f. New Orleans.
2 "	" "	12⅜¢	" Vicksburg.

less ¼ cent special allowance to our regular trade, shipment in May June; one-eighth cent per yard per month higher from July first.

The price on ties will probably be $2.11 per bundle basis f. o. b. Pittsburgh, plus freight per Carnegie Steel Company's freight list when issued, less 4 cents per bundle special allowance to regular trade. Shipment after July first.

024 The quantity of American bagging we will have to offer will be limited, sales of this brand must be made subject to stock, and all sales must be confirmed before closing. This letter is for your information, so do not use these prices until you hear from us next week.

Yours, truly,

WARREN, JONES & GRATZ."

The WITNESS. On May 17, 1917, they wired me a telegram, which I submit.

(The telegram is marked "Exhibit No. 10," and is as follows:)

[Telegram.]

ST. LOUIS, MO., *May 17th, 1917.*

P. P. WILLIAMS AND CO.,
Vicksburg, Miss.

Memphis price American Audience Union astute f. o. b. less abdomen June basis; sell American for shipment from Memphis

subject to stock; our supply this brand limited for present; do not sell ties except with bagging; if we have any surplus ties to offer later will advise; have no crescent to offer; continue work on Borneo.

WARREN, JONES & GRATZ."

625 The WITNESS. You will note that they quoted prices and then said "For present do not sell ties except with bagging. If we have any surplus ties to offer later will advise you."

On May 24, they wired me not to sell any ties now enroute.

(The telegram was marked "Exhibit No. 11," and is as follows:)

[Telegram.]

ST. LOUIS, MO., *May 24 17.*

P. P. WILLIAMS & Co.,
Vicksburg, Miss.

Entwine do not sell any ties now enroute; are using every effort to concentrate stock to take care our contracts.

WARREN, JONES & GRATZ."

The WITNESS. On August 25, 1917, they wrote me this letter, which I submit.

(The letter was marked "Exhibit No. 12," and is as follows:)

"WARREN, JONES & GRATZ.,
ST. LOUIS, MO., *August 25, 1917.*

626 MESSRS. P. P. WILLIAMS & COMPANY,
Vicksburg, Miss.

GENTLEMEN: Please do not sell any more ties for shipment from Vicksburg stock without first communicating with us.

There is much uncertainty as to how many ties the Carnegie people will be able to produce in September and the railroad situation caused by the movement of tropps and camp equipment is going to make shipments from the mills almost impossible. This will necessitate us drawing on stocks in the field.

Yours, very truly,

WARREN, JONES & GRATZ."

By Mr. BIGGS:

Q. Is that all you have to say?

A. That is all.

Q. Have you in your possession all of the correspondence that took place between you and Warren, Jones & Gratz during these years,, 1916 and 1917?

A. I have it all in my satchel there.

Q. You are perfectly willing, are you, to have anybody go through all of those files?

627 A. Every bit of it; I brought it along so they could see it if they wanted to.

Q. You have picked out such stuff as you thought material for this inquiry?

A. I have. We are prepared and anxious to show it.

Q. Now, you deny in your answer that you have refused to sell ties without bagging, for the purpose of stifling competition and affirm that you have sold and are selling thousands of bundles of ties to parties who bought ties only. Please recite some instances where you did this in 1916 and 1917.

A. Well, taking my statement of 1916, on July 20, I sold the Greenwood Grocery Company, of Greenwood, which is a branch of the Goyer Company at Greenville, to which I referred a little while ago, 2,000 bundles of ties.

Q. What brand of bagging do they handle?

A. They handle the Ludlow bagging exclusively. I have never been able to induce them to buy our bagging, except in rare cases, where they could not get the Ludlow.

Q. Were those ties sold at the same price that you sold everybody else.

628 A. Exactly the same price that we sold—at as low a price as we sold any ties that year. An July 29 I sold S. Gumble & Company, of New Orleans, 500 bundles of ties.

Q. At the same price as everybody else?

A. Same price as others.

Q. Sold no bagging?

A. No bagging. On August 11 ——

629 Q. 1916?

A. 1916, I sold H. & C. Newman, New Orleans, a lot of 300 bundles of ties.

Examiner McCorkle. You have the price you sold them for?

The Witness. They are all down here, yes, sir.

Examiner McCorkle. I was going to say that that is one of the issues.

The Witness. I will cover that a little later.

By Mr. Biggs:

Q. If you have got the price, state the price, Mr. Fitzhugh.

A. Yes. It will not convey any impression to your mind, Judge, because nearly all of our goods are sold at a delivered price, and you don't know what the freight is. I don't see how you can get at it, unless you accept my statement that that is true. You would have to get all of the tariffs and figure on freight rates.

Examiner McCorkle. You can just say so and so, with freight included.

Mr. Biggs. Delivered at such and such a point.

Examiner McCorkle. Yes; that is all you can say.

630 The Witness. Well, the Greenwood ties were sold at $1.48, delivered at Greenwood. The Gumble ties were sold

at $1.50 at Vicksburgh. That was later on, when the price was higher. The Newman ties were sold at $1.45 f. o. b. Vicksburgh. That was made in the opening of the market—that sale was made. Now, during this time, also we sold a number of bundles of ties, along with Calcutta bagging. For instance, on August 30th we sold the McMahan Grocery Company, Greenville, 15,000 yards of Calcutta bagging and 550 bundles of ties. On August 28th, we sold R. H. Green, a jobber of Jackson, Mississippi, a thousand bundles of ties.

By Mr. BIGGS:

Q. Without bagging?

A. Without bagging. He handled Ludlow bagging when he could get it.

Examiner MCCORKLE. You did not put the price in.

The WITNESS. $1.49 delivered. On September 20th, we sold Early, Foster Company, at Houston, Texas, a thousand bundles of ties, without bagging, at $1.48¾ delivered. On September 29th we sold the same parties 800 bundles of ties at $1.48¾ delivered, without bagging. On October 21st, we sold Stewart Gwynn, Memphis,
631 600 bundles of extra heavy ties at $2.07 a bundle, without bagging. On November 29th, we sold Early-Foster Company, at Terrell, Texas, 600 bundles of ties at $1.59½ delivered. On December 7th, we sold the Brinn Store, at Terrell, Texas, at $1.60, delivered. On December 12th, we sold J. M. Willis & Company, at Wharf City, Texas, 2,000 bundles of ties at $1.60, delivered, and the same date another lot of a thousand bundles of ties at $1.60 delivered. On December 16th, we sold J. M. Willis & Company, at Durant, Oklahoma, 1,000 bundles of ties at $1.62 delivered—all of these without bagging.

Q. How about the concern, Rumble, Wenzel & Company?

A. On December 16th, we sold J. M. Willis, Durant, Oklahoma, a thousand bundles of ties at $1.62. On December 18th we sold J. M. Willis, at Durant, 1,000 bundles of ties at $1.62 delivered.

Now, I call attention to the fact that these sales of ties, without bagging, were made in 1916, the same year that our Natchez friends complain that we would not sell them all of the ties they wanted, without bagging.

Q. Who do you mean by that?

632 A. Rumble & Wenzel Company. I explained that in this way, that at the beginning of the season there was every prospect of a big cotton crop, and we thought it advisable to limit our sales.

Q. How about the question of getting manufacturers to make ties?

A. I say, there was probably this inability to get what ties we thought would be required to cover this large cotton crop that was in prospect, but in the latter part of the season, when these sales were made, the crop had deteriorated very much, and we found there would be plenty of ties and bagging to go around, and we sold ties

to anybody that wanted them, and you will find, if you figure that up, that that is a very large percentage; that the number of bundles of ties we sold, without bagging, is a large percentage of our total number of sales during the year 1916, which I testified earlier was 52,000 bundles, all told.

Q. Now, did you sell any ties in 1916 to Rumble & Wenzel, and I. Lowenberg & Company, of Memphis? You did not read their names from that list. That is the reason I am asking that question.

633 A. I will answer that question a little later, if you will let me do so. I would like to go on with 1917, because that is another year in which we sold a great many ties, without bagging. I will come to Rumble & Wenzel and Lowenberg both a little later.

Q. All right; you did sell them?

A. I did sell them both.

Q. All right.

A. In 1917 we sold ties, without bagging, among others to the following parties:

July 16, Rumble & Wenzel, 1,200 bundles of ties, price $2.08, Pittsburgh, without bagging.

On July 16 we sold I. Lowenberg, Natchez, without bagging, 1,000 bundles of ties at $2.08, Pittsburgh.

On September 12, Rumble & Wenzel, Natchez, 1,000 bundles of ties at $2.27, delivered Natchez.

On September 13, Rumble & Wenzel, Natchez, 200 bundles of ties at $2.26 f. o. b. Vicksburg.

Q. Was there any difference made in the price of these ties by reason of the fact that they did not buy bagging?

A. None whatever. They were sold at as low a price as we sold anybody.

634 Q. Go ahead.

A. On September 26 I sold the Interstate Grocery Company, Helena, Arkansas, 800 bundles of ties at $2.25 delivered.

On October 3rd, Rumble & Wenzel, Natchez, 700 bundles of ties at $2.25, Natchez.

On November 22nd, I sold Rumble & Wenzel, Natchez, 1,000 bundles of ties at $2.25, delivered Natchez.

I would like to put in evidence here some correspondence in 1917.

Q. With whom?

A. With parties to whom I tried to sell ties, without bagging, earlier in the year.

Q. Showing you tried to sell ties without bagging?

A. Without bagging.

Q. Did these parties that you detail here buy all of the ties that they wanted during this time—that they asked for?

A. I sold them.

Mr. THOM. I object to that question, because I think it is a perfect impossibility for him to say if these people bought all the ties they wanted.

635 Q. Did you sell them all they tried to buy?

A. I sold them all they tried to buy from me.

Q. You have some correspondence?

A. I will qualify that statement by stating that we sold Rumble & Wenzel, eventually, all of the ties they needed. We did not sell them, or we declined to sell them, all that they wanted to buy for immediate shipment, at the opening of the season. My correspondence with them is all here, and I am going to put that in the record, so you need not bother with taking any notes on that.

Q. You did eventually sell them all they asked you to sell them?

A. All they asked me to sell them.

Q. You had some correspondence with various parties in 1917, in which you tried to sell ties?

A. Ties without bagging.

Q. And you offer that in evidence, do you?

A. I will put this correspondence in.

Q. Cannot you name the parties that you tried to——

A. Yes; on August 14th I offered the Greenwood Grocery Company ties—offered them 1,000 to 2,000 bundles.

Mr. THOM. What year is that?

636 The WITNESS. 1917. This is without bagging.

May 18th, 1917, I offered the Rosedale Compress Company, at Rosedale, ties without bagging. On July 11th I offered R. H. Green, at Jackson, ties without bagging. On May 19th I refused to sell the Interstate Grocery Company, Helena, ties without bagging, and I would like to read the letter I wrote them:

"Confirming our conversation by telephone to-day, we will not care to sell 1,500 bundles of ties without a proportionate quantity, say three cars of 45,000 yards, of bagging. We understood from your conversation that you had already bought all of the bagging you needed, and that you think you will be able to get ties from the party who sold you the bagging. We believe you would do well to buy the ties from this party. In the event that you are unable to buy ties through that party, suggest you let us know and we will do anything we can to help you get some. There seems to be a scarcity of ties, and the people whom we represent are not willing to sell ties unless the buyer will take a proportionate amount of bagging."

Q. Did you afterwards——

637 A. I afterwards—later on—their name appears as one of the parties whom I sold ties to without bagging.

Q. They were unable to get them and you did sell them eventually?

A. I sold them later on. I don't think they were unable to get these. I think they got what they needed then. I sold them some later on, when we found that the cotton crop was shorter than we expected and we had the ties to spare.

Q. You had the ties to offer?

A. Yes, sir.

Q. Now, are you through for the present on that, Mr. Fitzhugh?
A. Yes, sir.
Q. Now, state whether or not it was your desire in handling this business to first, at the beginning of the season, at the times you have testified, take care of the regular customers that you had in your trade who were legitimate dealers and handled bagging and ties and sold them to the trade?
A. That was our policy and our instructions from Warren, Jones & Gratz. I refer now particularly to 1916 and 1917. Previous
638 to that time I don't recall, unless it was possible for a little time in 1915—previous to that time, before the war, there was no trouble in—there were no restrictions as to our selling ties. We sold them to anybody we could and sold all we could if we got the price, but beginning with 1916 and 1917, and possibly during part of 1915, our instructions were and our policy was to conserve our stock and to try to put it in our own territory, where we would supply the people who depended upon us each year for bagging and ties.
Q. You stated that you controlled only a limited quantity of ties, and it was your policy to regulate the sale of them so as to care for the needs of your regular customers; also that you have, at times, in pursuance of such policy, refused to sell lots of ties to dealers who did not wish to buy bagging. Please give us some instance in which you did this and recite the circumstances as briefly as you can.
A. In May, 1917, I had a number of inquiries from parties who wanted to buy ties without bagging; notably, May 19th, Mr. M. M. Bridewell, of Little Rock, telegraphed me to quote ties. I
639 replied to him that we had no ties to sell without bagging.
Q. Who was Mr. Bridewell; do you know him?
A. I did not know who he was.
Q. Never heard of him before?
A. Never heard of him before.
Q. Do you know him in the trade?
A. Not at all. I assumed that he was a broker in Little Rock. On May 7th, Early Foster Company, of Waco, Texas, wired me "Can you quote us five to eight thousand bundles new times, prompt June and July shipment." I replied to them, thanking them for the wire, and stating we were not in position to offer them any at the present time. On May 23rd, Simmons, Newsom Company, of Dallas, wired me, "Wire lowest price 5,000 bundles cotton ties, June, July and August shipment." I don't know what I said to them. I just did not get a copy of my answer. I have attached so little importance to it. I either told them I did not sell ties without the bagging, or did not have any to offer. W. F. Daly & Company, of Waco, Texas, wrote us May 21st to know if we would quote them 3,000 bun-
640 dles, and to wire them at their expense. I don't know what I answered, either that I did not——
Q. You don't know what you answered?

A. I don't know.

Q. Then do not state.

A. May 21st, 1917, Hammet Grocery Company, Pine Bluff, Arkansas, said, "Wire best price, 2,000 bundles of ties." I could not find the answer in my files.

Q. You did not have them to offer at that time?

A. I did not have them and I don't know what I said.

Borem, Stewart, Dallas, wrote me on May 29th, "Please wire us lowest price." I cannot find my reply to that. I don't know what I said to them, if I answered at all. They came so fast that we just ignored them.

A. Had no ties. That probably was not a very conventional thing to do, but we were just so crowded.

Q. Please state whether or not a large percentage ofthebuyers buy mixed cars of bagging and ties, as far as your business is concerned?

641 A. In our trade that is the case. The great proportion of them buy bagging and ties together, both in carloads and in less than carloads, and my statement here will show.

Q. That is as far as the trade goes—the consumers—the farmers I am speaking about.

A. That they buy that way, with the exception of these people?

Q. Who you have sold ties to, without bagging?

A. Without bagging.

Q. But in the other instances, a great percentage of your business is done to the consumers and farmers in mixed shipments, a certain amount of ties with a certain amount of bagging?

A. Yes.

Q. But you also, of course——

Mr. THOM. I think you are leading the witness.

Mr. BIGGS. It is so apparent that that is a fact, I thought it would save a little time. That was all, Mr. Thom.

642 Q. Now, you affirm in your answer, Mr. Fitzhugh, that you are making numbers of sales of ties to purchasers who handle bagging made by other manufacturers than the American Manufacturing Company. What is the fact about that?

A. I have already covered that in my statement of these sales in 1916 and 1917. I showed that the Greenwood Grocery Company, for example, handle Ludlow bagging. H. & C. Newman handle Ludlow bagging.

Q. The Hub Bagging Company you sold yourself, which was the Ludlow bagging; in the instances where you sold that, with ties, you sold the ties that were obtained, did you not, through Warren, Jones & Gratz?

A. I did.

Q. And also as to the Calcutta bagging?

A. With all the Calcutta bagging I sold ties, and sold Warren, Jones & Gratz's ties, and they made no objection whatever to my selling their ties.

Q. And prior to the time when this condition existed in 1916, or the latter part of 1915, I understand you to say that before that, there had never been any restrictions about this matter, one way or the other. You had sold ties to anybody that wanted to buy them?

A. That is true. We could get plenty of ties, and our
643 instructions were to sell them to anybody that would pay the price.

Q. Now, in your answer you deny the fact that purchasers handling other brands of bagging had any influence or effect upon the price you made such purchasers. Please refer to your list of sales and say if the ties sold to the parties therein, who did not buy bagging, were sold as cheap as to others who did buy bagging?

A. I have already answered that question, in reply to the examiner's question. I repeat what I said before, that these sales of ties, without bagging, were made at as low a price as we made those who bought ties with bagging. We made no distinction—no difference in the price, whether a man bought ties or bagging, or ties and bagging together. If we had the ties to spare and thought it was advisable to sell him, we sold him at the same price, if he ordered the bagging with the ties.

Q. That was so as to the ties that you sold Rumble & Wenzel Company and L. Lowenberg & Company?

A. This is true. I charged them no higher price than we charged other dealers who bought bagging from us along with the ties.

644 Q. Have you a statement there showing the bagging and ties that you sold Rumble, Wenzel & Company and I. Lowenberg & Company, of Natchez, in 1916 and 1917?

A. I have. I would like to put that statement in as an exhibit.

Q. You heard the statement and the evidence of Mr. Korndorffer at Jackson in regard to that matter, did you not?

A. I did, yes, sir. I would like to put——

Q. Now, if you can, state the fact with reference to your sales. Without objection from the other side, I think maybe it will be plainer and better if you do that than to put them in, unless you prefer to.

Mr. THOM. What is the nature of the statement?

The WITNESS. The total sales of bagging and ties made I. Lowenberg & Company and Rumble & Wenzel, Natchez, during 1916 and 1917.

Mr. THOM. You, in substance, will summarize that statement?

Mr. BIGGS. Exactly..

Mr. THOM. There will be no objection to that.

Mr. BIGGS. Go ahead.

645 The WITNESS. Now, you asked if I had the statement. I say I have the statement of all sales of both bagging and ties to Rumble & Wenzel and I. Lowenberg, during the years 1916 and 1917. Now, you asked did I hear Mr. Korndorfer's evidence. I did. I was at Jackson and heard it.

Q. Well, now, just state what are the facts with reference to your sales of bagging and ties, or ties—I believe you did not sell them bagging. Yes; you did sell Rumble & Wenzel bagging in these two years, 1916 and 1917?

A. You mean to say you want me to recite my recollection.

Q. And what your records show.

A. I heard Mr. Korndorffer's testimony. My recollection on that subject of our conversation differs somewhat from his.

Q. You mean in reference to what matter?

A. In reference to the sale of bagging and ties to him in the season of 1916, when he said that we forced him to buy bagging, and he did not want to buy, before we would sell him ties that he needed. My recollection is that I called Mr. Korndorffer up over the telephone, and told him that we would like to sell him bagging
646 and ties during the season of 1916; that we wanted him to handle some of our bagging. He said that his trade had a prejudice against our bagging and that he could not handle it successfully. I replied that I sold from a million and a half to two and one-half million yards every year all around him, and I thought he was as good a salesman as I was, and I knew he could sell it, if he tried, as well as I could. I told him we had three or four different kinds of bagging, and I would like to send him sample rolls, and let him look at our bagging and see if he would not change his mind. So on June 28th I sent him a roll of American bagging, a roll of Calcutta bagging, and a roll of Borneo, which was a high grade $2.25 bagging made by the American Manufacturing Company, or Warren, Jones & Gratz.

Q. No, it is not made by Warren, Jones & Gratz.

A. Made by the American Manufacturing Company, sold by Warren, Jones & Gratz. I sent him these three different rolls—samples—on July 8th or thereabouts. Soon after this shipment had had time to arrive, he called me up over the telephone and told me that he had looked at the samples, and that I could ship him
647 100,000 yards of the American bagging.

Q. And how many ties?

A. Let us see how many ties that was. Something like five or six thousand bundles.

Q. Five thousand bundles of ties, that is his statement, that he bought from you at that time?

A. Yes; I did not force him to buy this bagging. I told him that we would like to sell it to him, and we were not selling ties to people who did not buy our bagging. In fact, that other people we were requiring to buy 30 yards of bagging with every bundle of ties—that is the proportion; but I was very anxious for him to sell some of our bagging, and I was very much surprised when he gave me this order for 100,000 yards. If he had said fifty, it would have come nearer to what I expected him to buy, but I did not consider that I was putting any pressure on him at all. We had sold him his ties for a number of years, without bagging, and we were on

very good terms, and there was no effort on my part to make him take bagging, other than I tried to make every may who buys ties take bagging too.

We try to sell them together—try to sell them our goods.

648 Q. Now, this 5,000 yards of bagging that you sold—5,000 bundles of ties, was more than the amount that would be required to go with 100,000 yards of bagging?

A. Yes; nearly twice as much.

Q. All right; go ahead.

A. I have all of my correspondence.

Q. Will you state in a general way how many ties you sold Lowenberg, in 1916, without bagging?

A. In 1916 we sold Lowenberg 250 bundles of ties, without bagging. That was all he tried to buy from us.

Q. 250?

A. 250 bundles of ties, at various times.

Q. Did you also sell him in 1917?

A. In 1917 I sold him on July 16th, 1,200 bundles of ties, without bagging. That was all the ties he asked us to sell him.

Q. Now, in your business, you sell these direct; Warren, Jones & Gratz have nothing to do with who you sell bagging and ties to, have they?

A. No, I am not restricted.

Q. You pass on all of the credits, do you?

649 A. I pass on the credits and am absolutely responsible for that.

Q. Well, outside of this 5,000 bundles of ties in 1916 that you sold Rumble & Wenzel, you also sold him in 1917 ties without bagging, didn't you?

A. In 1917 I sold him something like 7,000 bundles of ties without any bagging whatever. When I called him up to ask him if he didn't want to buy ties he said he did, and he would figure with us, and then I asked him if he did not want some more of our bagging. He said no; he had 50,000 yards on hand that he had not sold. Well, we make it a rule not to have a dissatisfied customer in any case if we can avoid it, and I said to him at once, "Now, you need not fret about that 50,000 yards. I will take it off your hands," meaning, of course, that I would take it at the market price. I did not mean for a minute that we would take it for anything less than the market price. He replied promptly that that was not necessary; he thought he could sell it without any trouble whatever before the season was over.

Q. It had advanced in price, had it not?

A. Oh, yes.

650 Q. From the price he had paid for it when he bought it from you?

A. Probably two cents a yard. Now, he has already—I would like to—he has explained a number of circumstances in connection with that—his purchase of ties in 1917.

Q. 1916?

A. 1917, or both, but I am coming now to 1917.

Q. Rumble & Wenzel?

A. Rumble & Wenzel.

Q. My recollection was he said he did not have any trouble at all in 1917.

A. So he did; but I would like to refer to my correspondence with him at the beginning of 1917 to show that we were on the best of terms; that there was not anything to indicate he had been forced by us to buy anything he did not want to buy, or that any undue, unfair, or unreasonable pressure had been put on him. He wrote us on May 11, 1917: "Let us know if you are going to be in a position to quote us 7,000 bundles of ties when the market opens." To which I replied: "We believe we are going to be in position to quote you as soon as the market opens, and whether you will be able to buy at the
651 opening of the season 7,000 bundles, or your full requirements, we can not say, but we are sure we will be in as good a position as anyone else. Please do not fail to communicate with us when you hear the market is open. If we can not sell you your ties, we will be glad to compare notes with you and give you our best judgment, and it may be we might want to go in with you and buy a lot."

Well, to make a long story short, we sold him 7,000 bundles of ties that year—all that he required—at least all that he said he required and all he wanted to buy of us, and we shipped them to him as fast as he needed them.

Q. Well, you have shown the bagging and ties that you sold Lowenberg & Company, I believe?

A. Yes.

Q. Now, in June, 1916, when Rumble & Wenzel said they were forced to buy bagging from you, in order to get ties, were any ties offered to you by other manufacturers, outside of Warren, Jones & Gratz, who represented the Carnegie Steel Company at that time?

652 A. I recall that in June, about the 15th or 16th of June, somewhere along there, I was offered 15,000 bundles of ties by a broker named Flowers Brothers, who represented the Pittsburgh Steel Company. He told me that he was authorized to sell these ties for the Pittsburgh Steel Company and he would be glad to sell them to me.

Q. That was sometime after the market opened, was it, in 1916?

A. Very soon after the market opened.

By Mr. ROBERTS:

Q. Was that in a letter that he wrote you?

A. No, sir; it is just verbal. He is a broker in the town—usually came to my office.

By Mr. BIGGS:

Q. Flowers lived in Vicksburg?

A. Lives in Vicksburg.

By Examiner McCorkle:

Q. Did he state the price?

A. The price was the same as the opening price of the Carnegie Steel Company—the net opening price—the price with 4 cents a bundle off to jobbers. I told him that I did not care to buy those ties, but that I had been called up over the telephone a few days before by McMillen & Company, of New Orleans, who asked
653 me if I could sell them some ties; that I had no ties to sell McMillen, and I thought very likely he would be glad to have these 15,000 bundles that the Steel Company offered. He said he would wire McMillen and offer them to him, and he told me a short while afterwards he was much obliged to me, that he had sold the 15,000 bundles of ties to McMillen & Company, of New Orleans. I am glad to mention that fact, because I want to say that there was no effort on our part to keep anybody from getting ties, and that we were perfectly willing and glad enough to see McMillen get them if he wanted them.

By Mr. Biggs:

Q. It was a question of your having ties yourself?

A. Yes; I did not have them.

Q. Did you hear the evidence of Mr. Graves, at New Orleans, as to the number of ties and yards of bagging that he handled?

A. I did.

Q. How did that compare with yours?

A. Why, Mr. Graves testified that he sold during these years—handled from 120 to 200 thousand bundles of ties, and that he
654 handled on an average 5,000,000 yards of bagging. That is more—that is nearly three times as much as I handled during those years, and twice as much as I handled in the last eight or ten years.

Q. Now, Mr. Fitzhugh, you are charged in this complaint with having made contracts for the sale of large quantities of ties and bagging, for use and consumption in the United States, in violation of section 3 of the Clayton Act, in that you have fixed, or are now fixing, the price charged therefore, or the discount from or rebate upon such price, on the condition of agreement or understanding that the purchasers thereof shall not use or deal in the goods, wares, merchandise, supplies, and other commodities of a competitor. Did you ever at any time have any information from Warren, Jones & Gratz that you should, when you sold your bagging and ties—that you should deal exclusively in their product, or make any contract with them to that effect, or with anybody else at any time?

Mr. Thom. Mr. Examiner, I object to that question, as the witness is being asked a question of law. I think the question should be confined to the policy of Warren, Jones & Gratz, and also the
655 policy of P. P. Williams & Company, which acts would be indicative of whether the contract had been made.

Mr. Biggs. I am not asking him a question here. I am asking him whether or not he had any such contract as that. You say he did business that way. I am proving that he did not. That is all I have asked him.

Examiner McCorkle. Note the objection and proceed.

Mr. Biggs. I am including Warren, Jones & Gratz or any other party that he does business with.

Mr. Thom. That is what I am objecting to. It is a question of law he is being asked.

Examiner McCorkle. Note the objection and proceed.

The Witness. If I understand your question, Mr. Biggs, you want to know whether we have fixed the price we charge for the bagging and ties, on the condition of agreement or understanding that the purchaser should not use or deal in the bagging and ties of any competitor?

By Mr. Biggs:

Q. Yes; whether you made any contract with anybody to that effect?

A. We did not.

Q. Whether Warren, Jones & Gratz at any time attempted at any time to make any contract with you, or did make
656 a contract of that kind with you?

A. We made no such difference ourselves, and we were not asked or required by Warren, Jones & Gratz to make any such difference, and we were never asked by them to make any such difference.

Mr. Thom. Have you finished?

Mr. Biggs. Yes.

Mr. Thom. Now, Mr. Examiner, I also wish to object to the answer as given, on the same ground. It is inadmissible, because it is a statement of his opinion as to one of the questions of law which is in issue.

Examiner McCorkle. Note the objection.

Mr. Biggs. I think we must misunderstand each other, Mr. Thom. I cannot understand why you take that position.

By Mr. Biggs:

Q. Mr. Fitzhugh, you have done business, have you, with Warren, Jones & Gratz, you say, for about 28 years?

A. No; I said for 18 or 20 years.

Q. You are familiar with trade conditions in bagging and ties in the country in which you do business?

A. Yes, sir.

657 Q. I want to ask you first, before I come to that, during these years has the price of bagging and ties—price of ties, we will say, that were sold by Warren, Jones & Gratz, which ties are manufactured by the Carnegie Steel Company—whether or not the prices at which they were sold, each year, have been about stable, in other

words, has there been any variance in the same year in the price of your product?

A. There has been very little variance between the price made at the opening of the season and the price carried through the season. Occasionally there have been small advances, but small always, and the prices have been maintained through the season with remarkable steadiness.

Q. Now, considering your experience in the trade, and the knowledge you have of the manner in which the entire business has been handled by Warren, Jones & Gratz, and the price charged for their product during these years, I want to ask you whether that business during that time has been, in your judgment, handled to the best interests of the whole trade, both merchants, consumers, and farmers?

Mr. THOM. Mr. Examiner, I wish to make the same objection, that the question calls for a question of opinion of the witness as
658 to one of the points in issue, as to whether unfair methods have been used in the trade.

Examiner MCCORKLE. Note Mr. Thom's objection.

Mr. RIGGS. Here is a man, your honor, that handles a good deal of this business. He is familiar with the trade conditions. He knows much more about the business than any of us, and I think it is perfectly competent for me to show by him what he thinks about it.

Mr. ROBERTS. I want to make the further objection that it seems to me it is a square conclusion of law on the part of Mr. Fitzhugh to to this matter, that he is just asked about. I do not think it is permissible for him at all to express an opinion about the most essential point in the case. He can only give the facts. Others will have to form an opinion.

Mr. BIGGS. He is an expert. He knows this business and he knows what would have been the effect upon the tie market—the tie business in the event that the business had not, at the opening of the season, in 1916 or 1917, been handled just as it was, and that is what I want to ask him about.

Examiner MCCORKLE. It is not my province to rule on it
659 just now. Just note the objection. I will throw out the suggestion that it strikes me it is incompetent. You might prove by half a dozen gentlemen they thought this idea was the correct one to do business, and yet they all might run counter to the Federal Trade Commission Act.

Mr. BIGGS. The thing is whether or not there was any intention here, or whether there was any effort made to control and to stifle competition. That must be necessary in the thing, or whether or not the methods that were used here were unfair to anybody. They are charged with being guilty of using unfair methods.

Examiner MCCORKLE. Is not that a question of the facts?

Mr. BIGGS. I would not take the position that I can ask this witness to testify to the question of law involved here at all, but I think he has got a right to give his opinion as to what the conditions would have been here if the business had not been conducted, and what

would have been the result if it had not been conducted just this way. I propose to show by him and other witnesses that we did this business in such a way that it was for the very best interests of everybody, including consumer, merchant, manufacturer, and everybody else.

660 Examiner McCORKLE. The objection is down. The gentleman can answer it.

Mr. BIGGS. Read the question again.

(The question was repeated by the reporter, as above recorded.)

The WITNESS. I think the business has undoubtedly been handled to the best interests of the consumer, and the farmer, and the ginner, the producer of the cotton, but I am not altogether clear that the best interests of the jobber have been conserved in every case by the course of Warren, Jones & Gratz. I have often thought——

Examiner McCORKLE. That will do.

By Mr. BIGGS:

Q. Why do you say that?

A. Because the jobber's profit is hardly enough to make the business profitable to him. To illustrate, on the present price of ties——

Examiner McCORKLE. I am not interested in anything, except to keep the record straight and not make it too cumbersome.

Q. That is the fact, that you have stated?

A. Yes.

661 Q. Now, go ahead and state why you think it is handled to the best interests of the consumer and farmer.

Mr. THOM. Let it be understood I am noting the same objection to the answer, as well as the question.

Mr. BIGGS. Yes.

The WITNESS. What was the last question?

Q. Why do you think it has been handled to the best interests of the merchant, and farmer, and ginner, especially?

A. Because the price has been held uniform and has been held down by their plan—their policy of refusing to sell ties to speculative dealers, or to use a term that is common since the war began, "profiteers." They have refused to sell or to let us sell ties except to the legitimate trade, and in 1916 and 1917, as far as possible, to sell bagging and ties together to people who were buying them to distribute.

Q. In other words, to keep them out of the hands of the speculative dealer?

A. The profiteer.

Q. Now, you handle other fibers, do you, and other steel products, outside of ties and bagging?

662 A. Yes; we handle burlap bags, on a large scale, made of jute, and we handle wire and nails—steel.

Q. How do these prices for ties compare with the prices of other steel products?

A. As a rule the price of ties per pound is lower—much lower than the price per pound of other steel products, such as wire nails.

Q. What would you say with reference to comparing the price of bagging with the price of burlap and other fibrous products that you know about—jute products?

A. Well, burlap bags, just taking one style of bag as an illustration, and that is a fair illustration of others—new burlap bags that hold five bushels of oats, which we used to buy in 1915 and the early part of 1916 for 8½ to 10 cents each, are now selling at 29 to 30 cents each. That is an increase in price of 300 per cent.

Q. How about the price of bagging in 1913, 1914, 1915, 1916, and 1917?

A. I will have to refresh my memory on that by looking at the quotations of bagging made me. I will answer that question
663 by quoting Warren, Jones & Gratz quotations to us, at the opening of the season, each year.

On June 29th, 1915, the price of American two-pound bagging was 8¼ cents, St. Louis. The price on June 24th, 1916, was 11¼ cents f. o. b. St. Louis.

The price on May 12th, 1917, was 13 cents f. o. b. St. Louis.

In other words, there was an advance of 4¾ cents between June, 1915, and May, 1917, or about 50 per cent.

Q. Jute bags during the same period, and they are made out of the same material, advanced substantially what amount?

A. I stated three hundred per cent.

Q. Suppose, Mr. Fitzhugh, during the past two years Warren, Jones & Gratz had made contracts promiscuously for the sale of ties, with everyone who wanted to buy, said sales being made in their regular way, for future delivery, not requiring a margin, and in any amount, regardless of the requirements of the purchasers for their regular trade, and thereby sell their entire supply of ties at the opening of the market, what, in your judgment, would be the result on the price of ties to the consumer, or farmer, if the ties
664 were all in the hands of dealers, and Warren, Jones & Gratz had none to offer?

Mr. ROBERTS. That is speculative, if the court please; I do not think Mr. Fitzhugh could answer that question directly. I do not think anybody could. I do not think it is proper for the witness to undertake to give an opinion about a matter that is so uncertain, and rests on so many contingencies as that would necessarily rest on.

Mr. BIGGS. I do not think there are so many contingencies about that, Judge. I think if such men as Mr. Graves, of Houston, got control of all the ties in this country, people would be paying five and ten dollars a bundle.

Mr. ROBERTS. There is no presumtion that the ties would fall into the hands of people who would speculate.

Examiner MCCORKLE. I think it would be incompetent. Let it go in, though, if you want to.

Mr. BIGGS. Yes.

Examiner McCorkle. Let it go in. Note the objection. I think it is speculative.

The Witness. In my opinion the profiteers would have gotten control of all the available stock of ties in a few weeks—
665 not only the profiteers, but the dealers would have bought more ties than they needed, and the result would have been a large increase in the price to the consumer, or the farmer—the ginner.

Mr. Biggs. That is all for the present.

Cross-examination by Mr. Roberts:

Q. Mr. Fitzhugh, you spoke a while ago about changing your policy in the latter part of the season of 1916, with reference to the sale of bagging and ties, in that you adopted the policy in the latter part of the season of letting people have ties, whether they wanted bagging or not. Why did you do that? Why did you change your policy in that respect?

A. Because in view of the deterioration of the cotton crop we found, or we thought we found that there was plenty of ties to cover all of the cotton that had been raised. The trade which relied on me for ties had been supplied, and like every other merchant, I wanted to market my goods where I could get a profit for them, and I did not feel any necessity for holding them then for my usual
666 local trade.

Q. Was not this rather the reason for that, Mr. Fitzhugh, that in the early part of the season you thought there was going to be a very large crop of cotton made, and that there would, therefore, be a shortage of ties, and that inasmuch as you had on hand or had the control of a large quantity of ties, that you would use that control to market this American bagging? Was not that the reason why you did that in the first part of the season, and that later on, when you discovered that the crop was short, and that there would be an abundance of ties, that you saw that that could not be made to work, and you therefore marketed your ties as best you could? Now, was not that the real reason?

A. That was absolutely not the reason and never entered my head for a moment.

Q. Did you not state a while ago that when you discovered that the crop was shorter than you had thought it was in the early part of the season that you then changed your policy?

A. Yes; but I did not state that I had had at any time during
667 that year any surplus of American bagging. On the contrary, I stated that there was a great scarcity of bagging, and a letter from Warren, Jones & Gratz, which I read, showed that only a million yards was assigned to me, which was about all that they thought they could spare me. There was no question in my mind at any time about any difficulty in disposing of all the American bagging that I had or could get. The question was to get enough to go around and supply my regular trade, who depended on me for their supply.

Q. You said a while ago, as I remember your testimony, that you also had on hand a large amount at that time of other bagging besides the American bagging, and is it not true that at that time—I mean the early part of the season of 1916; in June, for instance—that you had on hand a large amount of bagging?

A. On the contrary, I stated that in 1916 I sold, all told, only 70,000 yards of Calcutta bagging, or five per cent of my total sales of that year; 70,000 yards is a mere nothing. I had customers—single customers—who would buy more than 70,000 yards. There was nothing burdensome, or nothing to cause me any apprehension whatsoever, as to the sale of that little lot of 70,000 yards of Calcutta
668 bagging, which was all I had on hand in 1916.

Q. Can you assign any other reason now for your changed policy in that respect, except the reason that I have just stated, to wit, that you were using the position that you held with respect to ties in order to market your bagging? Was not that the reason?

A. Not at all. On the contrary, I have stated that that was not the reason. I have stated that we wanted them to take bagging and ties together because the legitimate dealer had thought there was a protection against profiteers. Any broker, any dealer, hardly without exception, could buy enough ties to cause a shortage in the supply of ties, but very few of them, if any, would buy bagging enough to cut a material figure in the bagging.

Q. And you also stated, did you not, that Warren, Jones & Gratz told you, or wrote you, that same month, June, 1916, that it was problematical about the supply of ties that Carnegie was going to be able to make and restricted you in your sales of ties only to those who purchased bagging in conjunction therewith?

A. I stated that. I also stated, and their letter shows, too,
669 that the quantity of bagging was also limited, and that only a million yards had been set aside for me, and that I must conserve both the bagging and the ties and must sell them together.

Q. Well, now, passing from that, Mr. Fitzhugh, to another question that suggests itself to my mind, you testified a while ago about the profits that you made for the years 1915, 1916, and 1917 on ties. Some of those years there was less than $800 profit that you made on ties. Have you figured there only the profits that you made on bagging in those years

A. Yes, sir; I stated that.

Q. Well, I beg your pardon. I did not understand you to state the profit you made on bagging.

A. I did; yes, sir. I did not state it in dollars and cents, but I stated it as on a percentage basis, but with a little calculation you can figure that out for yourself.

Q. Give the profits, please, that you realized on the sales of bagging for those three years—1915, 1916, and 1917.

A. I have not figured the exact sum up, but I stated that the bagging business was, in answer to Mr. Biggs' question—that the
670 bagging business was from 6 to 8 or 9 per cent of our total

profit, and I showed that the tie business was 1 per cent in 1916, and ¾ of one per cent in 1917, and I showed that in 1916 we made $780 on ties and, in 1917, $840 on ties.

Now, with those percentages given, it is easy to figure out what we made on bagging. You can work it out here in your head. It was about, in 1916—it would figure about $6,700 or $6,800 on bagging, and in 1917 about the same thing—about $6,500 or $6,600 on bagging.

Q. In other words, your profits on bagging were about eight times as large as your profits on ties?

A. Just about.

Q. That is what I thought. That is the way I understood you, but I wanted you to make that clear.

A. Yes.

Q. So that you had very much more interest in selling bagging, as a business man. It was worth a great deal more to you to sell bagging than it was ties, was it not?

A. Well, no sir. The percentage of profit is—cost considered—does not vary a great deal, although the sale of bagging is more profitable than the sale of ties.

Q. There is a better profit?

671 A. There is a better profit. We make less money in selling ties than almost any other commodity we handle. All dealers do. But, remember, you can not sell bagging well without ties. They go together.

Q. In reply to Mr. Biggs' question a while ago, did you not give the opening price of ties for 1915, 1916, and 1917?

A. I do not think I did. I would be glad to. In June, 1915, the opening price of ties was 85 cents f. o. b. Pittsburgh. In June 24th, 1916, the opening price was $1.35 f. o. b. Pittsburgh. In May, 1917, the opening price of ties was $2.11 a bundle f. o. b. Pittsburgh.

Mr. ROBERTS. We are through with Mr. Fitzhugh.

Redirect examination by Mr. BIGGS:

Q. Is there anything else that occurs to you that you have omitted in your testimony? If you have, we will give you an opportunity to tell it.

A. I don't think so, Mr. Biggs. I have tried to enlarge upon and explain and prove the reply we made.

Q. One more question, Mr. Fitzhugh. Is it a very difficult
672 matter in the trade to handle the ties; that is, as far as their nature is concerned, as compared with the bagging? For instance, bagging is a bulky article, is it not, and requires considerable space to handle it—to store it, etc.?

A. Bagging is very bulky and really very troublesome to store a large amount of it. You can store 50,000 bundles of ties in a space that would not hold more than 50,000 yards of bagging.

Mr. BIGGS. That is all.

Recross-examination by Mr. ROBERTS:

Q. Mr. Fitzhough, is it not true that a great deal of the bagging that you sell, as well as the ties, are not stored by you at all; that you order them from the factory direct to the people to whom you sell?

A. It is true that a portion of the bagging I sell is ordered direct, but a very large proportion, and the larger proportion, is stored by me. I have large storage capacity, and I have frequently a million yards or more of bagging in stock. I had a million yards of bagging in stock at the beginning of the season of 1916,
673 and it is very important, particularly in these times when transportation is so uncertain, to have the bagging on the ground, so that you can ship it out promptly.

Q. These storage places that you have, are warehouses down there near the river, are they not?

A. Yes, sir.

Q. And really you have an abundance of storage space, have you not, where you can store bagging and ties in any quantity that you want

A. Not an abundance, no sir. My storage room is very valuable to me. Although I have four large warehouses I often get them so full that you could not get another carload in with a pile driver. We handle so many commodities, as I said. I testified we handle over 70 different commodities in carload lots.

Q. Well, ties are a very disagreeable thing to handle, on account of the paint that is on them, and all that sort of thing? They are disagreeable to handle, are they not?

A. They are probably disagreeable to the negro laborer who handles them, but I do not think they regard it as a serious
674 matter. I think they would much rather handle a bundle of ties that weighed 45 pounds than a clean sack of oats that weighs 160 pounds.

Q. When you want to move a roll of bagging across this room, you give it a kick and it rolls, don't it?

A. No, sir; we handle everything on trucks. We handle ties on trucks, too. We handle 20 bundles of ties on a truck, every time. They are moved in multiples of twenty, and bagging is moved in multiples of five, and we carry that all the way through. That prevents mistakes in loading. For example, if a man says, "I am short two rolls of bagging on a shipment of a hundred," it is utterly impossible. He is either short five or he is short none, and the same way with ties. They are handled all the way through in multiples of twenty on ties and five on bagging.

Q. I suppose none of your customers have ever claimed rattage on ties?

A. No, sir.

(Witness excused.)

675 JOHN J. SIMMONS was called as a witness on behalf of the defendants, and, being duly sworn, was examined and testified as follows:

Direct examination by Mr. BIGGS:

Q. Mr. Simmons, will you state your name, your residence and your business?

A. John J. Simmons, Dallas, Texas. My business is that of a grocery jobber.

Q. What is your firm name?

A. Simmons-Newson Company.

Q. How long have you been selling bagging and ties?

A. Since 1886.

Q. Now, you handle bagging and ties, or your concern does at this time, do they?

A. Yes, sir.

Q. What ties and what brand of bagging does your concern handle, as a general rule?

A. We have never sold any bagging, outside of the product purchased through Warren, Jones & Gratz.

Q. Is that so as to ties also?

A. Not absolutely so as to ties, but substantially so.

676 Q. You have usually obtained your supply of ties and bagging from Warren, Jones & Gratz?

A. Yes, sir.

Q. Have you had any trouble in the last couple of years? If you have, state what it was, in your supplying your trade with ties and bagging—getting a sufficient quantity of both?

A. We have been able to buy a sufficient quantity of ties, with some little in excess, through them, to evenly match all of the complete patterns that we could sell.

Q. Your concern sells the bagging and ties together, do they, to the trade?

A. That is our custom.

Q. And that is the way it is principally done to the consumer, is it not, and to the ginner in your country?

A. That is the way it is handled in Texas, in the main.

Q. To whom do you sell bagging and ties?

A. Oil mills and ginners.

Q. You have been familiar, have you not, during the past few years, with the prices of the ties that have been charged by Warren, Jones & Gratz?

677 A. Yes, sir.

Q. State whether or not during that period of time, these ties—that is, taking each season by season—whether they have fluctuated in price, or whether they have been stable in price, as a general rule?

A. Well, taking the season of 1917, aside from the carrying charges, there was no fluctuation in our State, save and except at

the end of the season a possible advance of two cents per bundle. No fluctuation whatever, so far as Warren, Jones & Gratz's price was concerned. There are very great fluctuations with brokers and speculators, local people in particular, in our State.

Q. In 1917?

A. Yes, sir.

Q. Did that same condition exist in 1916?

A. More or less.

Q. Now, your concern handles other products besides bagging and ties, Mr. Simmons?

A. Yes, sir; our business is largely confined to staple groceries.

Q. Do you handle steel products at all?

678 A. Nothing to speak of, outside of cotton ties. We have handled, in the past, nails and galvanized wire which would come under the head of steel products, but we don't handle nails at this time, and have not for several years.

Q. Are you able to state how the price of ties, for instance in the last few years, has compared with the prices of other steel products, such as nails and hoops?

A. The advance on nails and wire has been greater, compared to pre war prices, than that of cotton ties.

Q. Are you able to give us a statement as to wether or not the prices of bagging, as compared with other jute products—how the increase has been in regard to the price on those products, giving prewar prices and the present prices?

A. Our information is that the pre war price on oat bags and wheat bags and binding twine, which is a similar material—that the advances on those commodities have been very materially in excess of the advance on bagging, as compared to pre war prices.

Q. Now, I will get you to state whether or not the bagging and ties—whether or not it is not a fact that the bagging and ties that go onto a bale of cotton are sold by the farmers and ginner as cotton?

679 A. Brings the same price as on staple cotton. For instance, there would not be any difference; whatever the grade of cotton was, the price would apply on the bagging and ties.

Q. In other words, they buy that bagging and those ties at so much per pound. Then they sell them as cotton this last year, at as much as 30 cents per pound?

A. As high as 40 cents in Texas, for long staple.

Q. Can you give us an idea about the price in Texas of enough bagging and ties to go around a bale of cotton this past year, to the ginner?

A. The average price to the ginner, in our State, has been around $1.50 per pattern.

Q. What would that weigh?

A. The principal portion of the bagging that would wrap the cotton in our State would weigh, ties and all, 21 pounds per pat-

tern. In other words, one bale of cotton would be increased in weight 21 pounds, by the reason of the wrapping of the bagging and ties.

Q. That would cost about $1.50 to the ginner?

A. To the consumer.

680 Q. To the consumer, and he would sell it as high as 30 or 40 cents per pound?

A. I should have stated not the consumer. The farmer. It costs the farmer who raises the cotton about $1.50.

Q. So the farmer would pay $1.50 for 21 pounds of bagging and ties, and sell it for 30 or 40 cents a pound?

A. That 40 cents would only apply on long staple cotton.

Q. Whatever the price of cotton was, he would get the cotton price for his bagging and ties?

A. Beginning a year ago, now, cotton has fluctuated from practically 15 cents a pound up to more than 30 cents, for the average cotton, and as high as 40 cents for the long staple cotton.

Q. The point I wanted to make was that these bagging and these ties that he buys for $1.50, he sells them by the pound at whatever the price of cotton is.

A. That is correct.

Q. What was your experience—have you had any experience in the last couple of years, Mr. Simmons, in buying ties from concerns like the Atlantic Steel Company?

A. I believe in every instance where I have made any

691 inquiry for prices on new ties, that such quotations as we received have been materially higher than the price charged us by Warren, Jones & Gratz.

Q. At any time did they refuse to quote you absolutely?

A. They have always sold us all of the ties necessary to match the bagging.

Q. I mean these other people. Have they frequently refused to quote you at all?

A. Yes.

Q. And when they did quote you, it was at a price considerably higher than the price of Warren, Jones & Gratz?

A. During the season of 1917, about following the opening of the market, they were very materially higher.

Q. How much higher? Can you give us a general idea of the price?

A. Yes, sir; I have some correspondence here, showing their price on May 23rd, 1917. I wired the Conners-Weyman Steel Company, of Birmingham, Alabama, as follows:

"Please name us lowest price 5,000 bundles cotton ties, June,

682 July, or August shipment," to which they replied by wire on the same date:

"Answering offer 5,000 bundles new ties at $2.75 a hundle delivered last part of June, shipment immediate acceptance."

At that time we had considerable ties unsold, purchased from Warren, Jones & Gratz, that cost us $2.29 plus 24 cents freight rate to Texas common points, which included also in that price our profit. In other words, we were selling ties, delivered in Texas and making a profit at $2.40, where these people were asking us $2.75, a difference of 35 cents a bundle.

Q. You are familiar with the trade conditions that exist in your country, are you not?

A. More or less in our section.

Q. What is the extent of your business? That is, what amount of business generally do you do in bagging and ties?

A. Well, in 1917, the season including the business of 1917, our sales in bagging were something in excess of two million yards, and as I remember, our tie business was approximately 80,000 bundles, all of which was from Warren, Jones & Gratz, with the exception of 5,000 bundles of what I termed rebundled ties, or once-used ties.

683 Q. That is about the general average of your business, is it?

A. No; that is more bagging than we sold in the prior season.

Q. Now, these piece ties, or rebundled ties that you speak of, from whom did you buy those?

A. I bought them from Mr. Hutcheson.

Q. Mr. Claude Hutcheson?

A. Mr. Claude Hutcheson, of Jonesboro, Georgia.

Q. They were sold with bagging?

A. No, sir; I bought those ties after making an inquiry for new ties. I had no idea of buying that kind of ties; have never handled any before or since in all of my experience, but in endeavoring to find some ties for the oil mill, instead of quoting me the new ties he quoted me these rerolled ties, and my recollection is that I wired him to express me a bundle. He did so, and after looking at that I bought the 5,000 bundles, and sold practically all of them—had them sold to this oil mill, which was using a second-hand commodity, the product of original containers of sugar that had been imported into this country.

684 Q. So it is a fact that these rebundled ties or so-called piece ties are used in Texas?

A. Piece ties are used very scant in Texas, by reason of a statute in our State forbidding it. These were whole ties.

Q. What you call rebundled ties?

A. Rebundled ties. As I understand, on investigating it, those ties had been once around cotton, and in taking it to the cotton mill locally that the mill made a trade with the man who had the cotton, and gave him back just as many ties as he carried to the mill. When he disposed of his cotton then they were straightened out and rebundled.

Q. Now, if you handled 80,000 bundles of ties in your trade, and 2,000,000 yards of bagging, that would be considerably more ties

than would be required to go with that amount of bagging; is not that true?

A. Well, in our purchases from Warren, Jones & Gratz, they not only matched equally our purchases of bagging, but on the opening of the market I was absent in the State of New Mexico, and when my partner advised me that the market had opened, I wired
685 him to book an additional 5,000 bundles of ties, which they were kind enough to do, and we started with 5,000 bundles of ties more than we had bagging, and incidentally we bought this additional 5,000 bundles from Mr. Hutcheson. That was 10,000 bundles of surplus ties.

Q. Did you buy any more later in the season?

A. No, sir.

Q. Did you try to?

A. I sent a number of telegrams early in the season.

Q. I mean, did you try it later, from Warren, Jones & Gratz?

A. Didn't need them.

Q. You got all you needed?

A. Yes, sir.

Q. You say you did try earlier in the season to buy ties from other people?

A. Yes, sir; I sent twenty or thirty telegrams soon after the market opened. In fact, my recollection is, immediately on my return from New Mexico.

Q. Why did you do that?

A. My reason for doing it was to sound out the market and
686 see if anybody would have any price that might interfere with my playhouse.

Q. Did you try the other manufacturers, like Conners-Weyman and Atlantic Steel Company?

A. Yes; I tried all over the cotton States, to numbers of people, probably 30 telegrams.

Q. Was this 1916 or 1917?

A. 1917.

Q. What was the Atlantic Steel Company's reply, in your effort at that time to buy ties?

A. They replied to my wire for a quotation, which was the same telegram as the one I just read to the Conners-Weyman Company. That reply is as follows, on the same date: "Regret unable offer ties at present. Answer ascertain from trade before quoting outside." And under the same date they wrote us a letter confirming that telegram and commenting further, which I have here before me.

Q. Was there anything in addition in the letter?

A. Yes.

Q. All right; state that.

A. "Wish to thank you for your telegram to-day requesting price on new Arrow cotton ties. We have wired you as per con-
687 firmation enclosed herewith, advising that we are unable to offer you any ties at present, and it is necessary for us to

ascertain the demand of our home trade before quoting outside. It is, of course, our duty to take care of our regular customers first, and in view of the fact that we have only a limited tonnage available on our rolling mill for rolling ties, it will be necessary to ascertain what our regular customers will need before we will feel free to offer tonnage elsewhere. In the event we find it possible to offer you at a later date a proposition on ties we will give the matter careful attention."

Q. That is a letter you are quoting from the Atlantic Steel Company?

A. Yes, sir; under date of May 23rd, 1917.

Q. In the year 1916 I will ask you to state whether or not, prior to the opening of the market on ties, the ties were sold by people in your community, like Mr. Graves, we will say, of Houston, and others, at a price higher, and if so, how much higher than the opening price which was made by Warren, Jones & Gratz?

A. All ply per even pattern—that means the wrapping and the ties for a bale of cotton, an advance as high as $300 a car on minimum cars.

688 Q. Were sold prior——

A. Were sold and delivered prior to the opening, and the market was very much disturbed. The ginners were, to use a common expression, up in the air, by reason of the State having been circularized with predictions of war prices, and insisting that people place their orders promptly; that the commodity would be exceedingly scarce and hard to obtain, and it was being quoted at one dollar—well, I can say from $1.45 to $1.55 a pattern, prior to the opening of the market, all over our territory, by this man Graves, of Houston, and when the market opened, we delivered a million yards at $1.23 a pattern, including the ties.

Q. Considering your experience in the trade in your country, and the knowledge you have in reference to the manner in which this tie business has been handled by Warren, Jones & Gratz, and the price charged for their product, I want to ask you whether that business, during the last three years, has been, in your judgment, handled to the best interests of the whole trade, both merchants and consumers?

Mr. THOM. Mr. Examiner, I wish to make the same objec-
689 tion I made heretofore. The question calls for a statement of a conclusion of law as to one of the points in issue.

Mr. RIGGS. I understand, Mr. Thom, your objection goes to all of this sort of testimony?

Mr. THOM. For the purpose of the record, and to save time, the same objection, it is agreed by counsel, applies to all similar questions asked any witness hereafter, and the answers to the questions.

A. My answer to that question, based on the condition that existed prior to the opening of the market, and the sales that were being daily made, simply resulted in a saving to the farmers of

Texas of approximately $3,000,000, which should go to the credit of Warren, Jones & Gratz.

Q. Now, assume that on account of the price of steel, and extraordinary demands that were made on the steel manufacturers by the Government in the past two years, and that by reason of these conditions it has been undesirable and unprofitable for steel manufacturers and manufacture cotton ties, as compared with their other steel products, and that they have not, by reason of these conditions, manufactured their usual amount of ties, and that in conse-
690 quence thereof, by reason of these conditions, it has at the beginning of the season, when the tie market opened, been difficult to know whether there would be enough ties manufactured to wrap the cotton crop, which at that time is uncertain in amount. I want to ask you what, in your judgment and opinion, would be the effect on the tie market if the manufacturers should sell their product at the opening of the season to parties other than legitimate dealers in bagging and ties, who in turn sell to merchants and consumers

A. My opinion, based on my own experience for a man of my age—of course, I am not as old as I hope to be—is that had it not been handled in that manner it would have been necessary for the Government to have taken hold of the proposition, just as they did sugar, exactly. The price would have been exorbitant and unreasonable, controlled by speculators, just as sugar, a commodity I have handled all these years, as long as I have bagging.

Q. Would not the same result be likely to occur in the event the manufacturers sold their entire product to dealers of all classes, regardless of their requirements for their regular trade?

691 A. Naturally so. It would drift in that one direction.

Mr. ROBERTS. Of course, your Honor understands that we consider this speculative and as of no value as testimony.

Mr. BIGGS. That objection applies to all this sort of testimony.

Mr. ROBERTS. That was a different objection.

Mr. BIGGS. I will make the same stipulation as to this objection, Judge.

By Mr. BIGGS:

Q. Now, Mr. Simmons, suppose during the past two years Warren, Jones & Gratz had made contracts promiscuously for the sale of ties with everyone that wanted to buy, said sales being made in their regular way, for future delivery, and not requiring a margin, and in any amount, regardless of the requirements of the purchasers for their regular trade, and thereby sell their entire supply of ties at the opening of the market, what, in your judgment, would be the result on the price of ties to the consumer or farmer, if the ties were all in the hands of dealers, and Warren, Jones & Gratz had none to offer?

692 Mr. ROBERTS. That is going too far, your Honor.

Examiner MCCORKLE. Note the objection and answer the question briefly.

A. Judging from my past experience, it would work a very material hardship in two ways. First, certain sections of the country would be discommoded and would be unable to market their cotton by reason of the shortage of these products, and in addition to that, the inconvenience of transporting it from one section, long on the commodity, to another section that was short—where it was scarce—would not only increase the transportation charges, but increase the price very materially by reason of the speculators who had the stuff, and realizing that some other section had to have it, regardless of price. I call to mind in my experience when I have bought from a gentleman who testified, Mr. Fitzhugh, bagging at an excessive price, because we didn't have it in Texas and couldn't get it, and Warren, Jones & Gratz couldn't furnish it to us. We bought it from Mr. Fitzhugh at Vicksburg and paid the charges to Texas, and we were glad to get it, because it was the only available bagging we could find. That was several years ago. It
693 was Warren, Jones & Gratz's product, you understand.

Q. Now, in your dealings with Warren, Jones & Gratz during these period of years I will ask you to state whether or not at any time you were ever asked to make, or required to make, any contract with them which would require you to handle their goods exclusively and not handle other people's goods of similar lines.

A. In no way whatever. Not the semblance of such suggestion was ever made to us, directly or indirectly——

Mr. Biggs. You may inquire.

Mr. Thom. Before we proceed to cross-examine I would like to have an understanding with Mr. Biggs to the effect that any question that we may address to questions that he has asked, heretofore objected to, that we do not waive our objection in any way. Inasmuch as the examiner does not pass upon these questions, we want to protect ourselves in the event the Commission rules that those questions are admissible.

Mr. Biggs. You mean if you cross-examine on any of these points?

Mr. Thom. Our purpose in addressing any question to the
694 witness, in line with questions and answers we have heretofore objected to, is done by us, not waiving any of our objections heretofore made; but inasmuch as the examiner has not the power to pass upon the admissibility of evidence finally, we are doing so to protect our interests in the event the Commission would rule that that evidence is admissible.

Examiner McCorkle. I do not know about that. I expect to pass on all of these objections when I make my report.

Mr. Thom. Then, in that case, reserving your right to pass on them, we desire to cross-examine, so in the event you decide that testimony is admissible, we want to protect our interests in cross-examining as to those questions.

Mr. Biggs. I think you will find that we won't be technical about a proposition of that kind, Mr. Thom.

Mr. Thom. I think the record ought to show that.

Mr. Biggs. Before we suspend, I neglected something at the opening of this hearing that I wanted to have the record show, and I thought the record did show at the conclusion of our hearing in Pittsburgh, and that was that you had overruled my motion which I made at the conclusion of the Government's case.

695 Examiner McCorkle. I went on the presumption that it was probably untimely and did not make a ruling on it.

Mr. Biggs. When I got the record written up I saw the motion was made, and there was no ruling on it one way or the other. If it does not show there, it will show it right here.

Examiner McCorkle. Yes.

(Whereupon, at 1.20 o'clock p. m., a recess was taken until 2.30 o'clock p. m.)

AFTER RECESS.

John J. Simmons resumed the stand.

Mr. Biggs. I believe I had finished with the witness.

Cross-examination by Mr. Roberts:

Q. Mr. Simmons, as I understand your testimony, you give it as your opinion that this policy of Warren, Jones & Gratz in not selling ties, without customers also buying a corresponding amount of bagging, is beneficial to the farmers of the country. Was that your testimony?

696 A. It is my opinion, from my experience, that is has a tendency to stabalize the market and eliminate the speculation.

Q. Why do you think that would stabalize, if they do require people to take bagging?

A. No ginner has any use for the single commodity. It takes both to cover a bale.

Q. Why would it benefit the farmers for dealers to be unable to procure ties without they were also compelled to take bagging? How would that benefit the farmers?

A. In my experience, I have seen the prices fluctuate 300 per cent.

Q. How would it benefit the farmers for Warren, Jones & Gratz to say that they won't sell you ties without you also buy bagging?

A. The farmer would have no use for either commodity unless he would get both.

Q. That does not answer the question. That is very clear; he would not need the one without the other; but how is he benefited by the fact that Warren, Jones & Gratz won't sell the one without the other?

A. It stabalizes the market and keeps a more uniform
697 price. In other words, it eliminates speculation, such as applied to sugar and provisions.

Q. Is that an idea you originated yourself?

A. That is an idea I have gained from my long experience in handling the commodity.

Q. Did you ever hear anybody else express an opinion to the effect that it stabilized the market for people who handled the ties not to take them unless they also took bagging with them?

A. I am of the opinion that I have discussed that with both oil mills and ginners. I call to mind an instance in my State a few years ago. We could not find any ties. The scarcity seemed to be so great that ginners and farmers were put to very great inconvenience. I remember the market opened——

Q. Qou spoke just now, Mr. Simmons, about its benefitting the farmers. What do you say about it benefitting the other manufacturers of bagging, this policy of requiring people to take the American bagging, if you allow them to have ties? How does that affect other manufacturers of jute bagging in the country?

698 A. I never had any experience or any talk with any other manufacturer of jute bagging in the country. I don't know their policy.

Q. You could not conceive how it could possibly benefit them, could you, for these people to require people to take American bagging, in order——

A. I could not conceive how the farmer could be injured, because of that fact that I don't know of any better commodity than the American product. Therefore, the farmer would be getting that that was the equal of any other commodity, and I can not see how he could be injured.

Q. You can not see how that other manufacturer of jute bagging could be benefited by this policy of Warren, Jones and Gratz?

A. I think they would be on an equal footing.

Q. What would you say to this kind of a proposition? If Warren, Jones & Gratz controlled a large percentage, more than one-half the ties of the country, and that they also were agents of the American Manufacturing Company, manufacturers of American bagging, if they use the fact that they have the control of all of these ties, in order to sell their bagging, by requiring people to take their

699 bagging, if they allow them to have ties, how would that affect the other manufacturers of bagging in this country, and how could they be benefited by that sort of a thing?

Mr. Biggs. I object to that, because I think Judge Roberts is assuming something in the question that the evidence, so far, does not warrant, unless he will promise to supply that evidence in some other way. There is no evidence here that they do control or have the sale of more than 50 per cent of the total ties of the country.

Examiner McCorkle. Objection noted.

Mr. Biggs. I just call your attention to the fact that you did not confine that to new ties. You said the total number of ties.

Mr. Roberts. I will state it 50 per cent of the new ties manufactured in this country.

The Witness. Now, your honor, I did not catch the question. He interrupted me there. Just put the question again.

By Mr. ROBERTS:

Q. I will ask it again. How could it benefit the other manufacturers of bagging in this country, if Warren, Jones &
700 Gratz have the sale of and control as much as 50 per cent of all the new ties manufactured in this country, if they use that fact in order to market their bagging—require purchasers of ties to also buy bagging, how could that benefit or fail to injure the other manufacturers of bagging in this country?

A. In answer to that question I will say that I have never given any thought or effort towards the benefit of other manufacturers. My concern has been with the farmers of my State. The cheaper they can buy it, the better it is for my country, because they are a very large majority of our citizenship in Texas.

Q. I understood you to say a while ago that you thought it was a benefit to the State generally.

A. I repeat that that is my opinion.

Q. Well, don't you think that these other manufacturers are concerned in the trade generally, in their part of the general trade?

A. My experience is, as demonstrated here in my effort in 1912, that the only manufacturers I approached were very materially higher on their product than were Warren, Jones & Gratz.

701 Q. Well, that don't answer the question, Mr. Simmons.

A. It answers it as far as my investigation went.

Q. How long have you been handling the product of Warren, Jones & Gratz?

A. Since 1886.

Q. Have you got the exclusive handling of it at Dallas?

A. Oh, no. All of our competitors handle the commodities—all that handle it at all handle it.

Q. Do they handle it through you?

A. No, sir; we buy it just like you would buy a sack of wheat or a pair of mules out there, and pay for it.

Q. Who do you buy it from direct?

A. My trade had usually been made with Mr. Murray; formerly with Ben Gratz in his active days. In latter days been made with Mr. Murray.

Q. Here in St. Louis?

A. Yes, sir.

Q. You testified this morning about the price asked you for ties in Atlanta, and in Birmingham. Don't you think that is largely owing to the fact that the freight rates are so much higher from your city to these points in Georgia and Alabama, than
702 they would be from St. Louis to Dallas?

A. No, sir; in the absence of the tariff I could not testify accurately, but it is my opinion that the through rate to Texas common points from Birmingham would be lower than the water rate from Pittsburgh to Galveston and then the rail rates from Galveston to interior points in Texas.

Q. Birmingham has no water rate?

A. But you would have a through rail haul to interior points.

Q. Is it not a fact, well known to the trade, that every city in the country that has water transportation has very much lower rates?

A. No; we can get from Pittsburgh to interior points cheaper than we can bring it through Galvestion, but we can not mix the products in Pittsburgh, and we bring it to Galveston, and a ginner wants so many kinds of bagging and so many ties, and there we place it in the car, and it is 24 cents from Galvestion to all common points in our State, and we reach Oklahoma at from 25 to 38 cents. We reach California from Galveston at 75 cents, all rail. We reach Arizona for 75 cents.

703 Q. That custom of selling bagging and ties in patterns is not very general, is it, Mr. Simmons?

A. Very general in our State—practically altogether.

Q. It is in your State; but I mean that custom does not prevail over the country generally, does it?

A. We have the largest cotton-producing State in the Union.

Q. I know you have.

A. It prevails in Oklahoma, in California, and Arizona, where we ship this product. We don't ship anything east.

Q. You don't know what the custom is in the other cotton States?

A. East of us I don't know.

Mr. ROBERTS. That is all, I believe.

Mr. BIGGS. That is all, Mr. Simmons. If your honor please, in connection with the testimony of Mr. Fitzhugh, I neglected to identify a certain letter that I wanted him to identify for the purpose of offering it as an exhibit, and I can recall Mr. Fitzhugh, if I can catch him on the telephone, which I think I can do, unless opposing

704 counsel will be willing to allow that letter to be introduced. That is, they may object to its materiality, but I mean as far as its identification is concerned.

Mr. THOM. I want to object to the materiality of it.

Mr. BIGGS. You can do that. I have no objection.

Mr. THOM. I may state that it is agreed between counsel that the letter may be introduced, on the theory that if Mr. Fitzhugh were present he would testify that he had received this letter in due course of mail, but counsel for the Federal Trade Commission desire to reserve objection to the letter, on the ground of the materiality of same.

Mr. BIGGS. That is all right. I ask that that be marked in connection with Mr. Fitzhugh's testimony as an exhibit and inserted in the record.

(The letter is as follows:)

[Exhibit Fitzhugh No. 11, 2/18/18.]

(Letterhead of Atlantic Jute Mills, Inc.)

NORFOLK, VIRGINIA, *June 19, 1917.*

P. P. WILLIAMS & Co.,
Vicksburg, Miss.

705 GENTLEMEN: We offer you, subject to prior sale, 2,500 bundles new pieced Arrow ties for July 1 shipment at $2.00 per bundle delivered Vicksburg. Each tie is pieced only once; otherwise they are standard new Arrow ties. If wanted, please wire.

Yours, truly,

ATLANTIC JUTE MILLS, (Inc.),
J. M. PARKER, *P. A.*"

W. P. PLUNKETT was called as a witness on behalf of the defendants, and, being duly sworn, was examined and testified as follows:

Direct examination by Mr. BIGGS:

Q. Please state your full name, your residence and your business.

A. My initials are W. B. Plunkett, Little Rock, Arkansas. I am president and general manager of the Plunkett, Jarrell Grocery Company.

Q. Does that concern handle bagging and ties.

706 A. Yes, sir.

Q. How long have you been in that business?

A. About 19 years.

Q. What are the general lines of business that you handle

A. It is wholesale groceries. That means flour and provisions, canned goods, bagging and ties, some feed stuff, tobacco, sugar, miscellaneous lines.

Q. You know the concern of Warren, Jones & Gratz, at St. Louis, do you?

A. I do.

Q. How long have you done business with them?

A. I think for eighteen years.

Q. Have you handled, as a general rule in your business, the ties that are sold by Warren, Jones & Gratz?

A. Yes, sir.

Q. Also the bagging that is manufactured by the American Manufacturing Company?

A. Yes, sir.

Q. Have you handled exclusively their lines, or have you handled other bagging at times, and other ties than the ones sold by them?

707 A. We have occasionally had some outside ties, but as a rule we have handled the Warren, Jones & Gratz line.

Q. Have they, during the past two or three years usually supplied you with your requirements for your trade in both bagging and ties?

A. They have.

Q. What has been, in a general way, approximately the extent of your business in bagging and ties, in the last two years, we will say?

A. We sold, this last season approximately a million yards of bagging, and a proportionate quantity of ties. That would be about 30,000 bundles.

Q. Did you sell any additional ties than just the amount required to go with the million yards of bagging?

A. Yes; we had some surplus ties left over from our 1916 purchase.

Q. Carried over?

A. Carried over, that we sold during the year 1917.

Q. As to the extent of your business——

A. And I might add that we had some ties left over out of our contract purchase for 1917, after we had used up or sold the bagging that we had contracted for.

708 Q. That is, you had some that you did not require in your business.

A. For that amount of bagging.

Q. Now, in the year 1916, Mr. Plunkett, did your business amount to about the same in volume?

A. Approximately; yes, sir.

Q. Have you carried over any ties from the year 1915 into the year 1916, do you remember?

A. I think a few. I did not look it up to see. I don't know just how many, but some.

Q. Now, take the year 1916; do you remember whether or not you bought any ties from Warren, Jones & Gratz, in excess of the number that would be required to go with the bagging that you purchased from them for that year?

A. We tried to make our purchases even up, from the fact that practically all of our sales, or the greater percentage of it, is in mixed ties and bagging and ties.

Q. And where is your business done principally? Is it done principally in your home State of Arkansas?

A. Yes, sir.

Q. Where else?

A. Practically altogether.

Q. Practically altogether in Arkansas?

709 A. Yes, sir.

Q. That is the way the business is done there?

A. Yes, sir.

Q. That is, they are sold to the consumers and to the ginners in mixed quantities, so many ties and so much bagging?

A. Yes; the carload buyers usually buy a mixed car of bagging and ties.

Q. During this time did you ever make any effort, or did you try to buy any ties from any of the other manufacturers of ties like the Pittsburgh Steel Company, or the Conners Weyman Company of Birmingham, or the Atlantic Steel Company of Atlanta?

A. No; I don't think so. We had no occasion to.

Q. Now, this business experience that you had with Warren, Jones & Gratz has extended over a good many years?

A. Yes, sir.

Q. I will ask you first, whether or not the prices of ties and bagging that have been sold during this time by Warren, Jones & Gratz have been fluctuated to any great extent—that is, during the same season—or have they been reasonably stable during say the last two or three——

710 A. They have been reasonably stable.

Q. Of course, from season to season there has been some advance?

A. Oh, yes.

Q. Do you handle other lines, any other steel products outside of cotton ties in your business?

A. Nothing except nails.

Q. Now, you know the price that has been testified to here today by Mr. Fitzhugh, and outside of that, you know what the price of cotton ties has been. Can you tell us how that compares with the price of other steel products? For instance, take nails or hoops.

A. Well, I don't know anything about the price of hoops, but I should say the price of cotton ties is in line with the price of nails. If anything, it is cheaper. I don't think there has been as much difference in ties as there has been in nails.

Q. Do you handle burlap or other jute products outside of bagging?

A. No, sir.

Q. And you do not handle any jute bags?

A. Well, just—we have a coffee roasting plant, and we have to buy some jute bags that we use in that, but not otherwise.

711 Q. Has the price of jute bags advanced materially since the war?

A. Yes, sir.

Q. What has generally——

A. I could not say how much, because I am not familiar with the prices, but I know that there has been a marked advance.

Q. Do you sell your product, bagging and ties—to whom principally do you sell?

A. The country merchants and oil mills, ginners, planters.

Q. Now, considering your experience in the business and in the trade, and knowledge you have in reference to the manner in which the ties business has been handled by Warren, Jones & Gratz, and the prices charged for their products, I want to ask you whether

that business, during the last three years has been, in your judgment, handled to the best interests of the whole trade, both merchants and consumers?

A. I think so.

Q. What reason have you, Mr. Plunkett, for that?

712 A. Well, it has enabled the ginner—the buyer to buy both his bagging and ties together, to buy in carload lots and get the benefit of carload freight rates. It has been a saving to him.

Examiner McCORKLE. You want the same objection noted to this?

Mr. THOM. As I understand it, Mr. Examiner, through agreement of counsel, that objection is to any question that may come hereafter.

Examiner McCORKLE. The same objection is noted to this and any similar questions of the preceding witnesses.

Mr. BIGGS. Yes.

Examiner McCORKLE. It might show a little better, so that we will not overlook it.

Mr. THOM. I would suggest that the Examiner, on his own initiative, when that question comes up, to note the objection previously made, if you desire the record to show that way.

Mr. BIGGS. Same objection; same ruling. Put that in there each time, if you want to.

Examiner McCORKLE. Yes.

The WITNESS. Shall I answer that question further?

Mr. BIGGS. Yes; go ahead.

The WITNESS. The majority of the mixed carloads of bag-
713 ging and ties that are sold into our State are in our section, made up in Memphis. Warren, Jones & Gratz have been carrying a stock of bagging and stock of ties up there, which has enabled them to give us service in the shape of prompt shipment and mixed carloads, thereby enabling ourselves or our customers to get the benefit of carload rates—lower rates than they would enjoy if they had to take their bagging and ties in less than carloads, on account of buying them singly.

By Mr. BIGGS:

Q. Of course, if they had to buy a carload of each at a time, it would make their investment that much greater.

A. Yes; and a great many of them don't use as much as a carload of ties and a carload of bagging in one season. It would give them more supply—more than they would be warranted in buying. They could not afford it.

Q. Now, in your business relations with Warren, Jones & Gratz, Mr. Plunkett, you have never had any contracts with them, have you, at an time, requiring you to deal in their products exclusively?

A. Never.

Q. At any time?

A. Never.

714 Mr. THOM. The same objection.

Examiner MCCORKLE. The same ruling.

Q. Suppose during the past two years that Warren, Jones & Gratz had made contracts promiscuously for the sale of ties with every one that wanted to buy, such sales being made in their regular way for future delivery, and not requiring a margin, and in any amount, regardless of the requirements of the purchasers or their regular trade, and thereby sell their entire supply of ties at the opening of the market, what, in your judgment, would be the result on the price of ties to the consumer or farmer if the ties were all in the hands of dealers and Warren, Jones & Gratz had none to offer?

Mr. THOM. The same objection.

Examiner MCCORKLE. Ruling reserved.

A. That would have brought about a speculative condition that would have meant a very much higher price, in my opinion.

Mr. BIGGS. You may take the witness.

Cross-examination by Mr. ROBERTS:

715 Q. Mr. Plunkett, what is the practice, briefly, in your State, in the territory where you deal, of selling bagging and ties in patterns, cutting it off, making up a pattern, just enough to cover a bale?

A. You mean for the jobbers?

Q. Yes.

A. No, sir; but a great many—quite a good many buy a certain particular pattern. They figure that it takes so many yards of bagging and so many ties to wrap a bale, and a ginner will say, "I want a thousand patterns of bagging and ties." That does not mean the jobber cuts off the bagging or that he opens up the ties.

Q. It does not mean anything, except that you just send him so many bundles of ties and a corresponding amount of bagging. That is all you mean by the expression "so many patterns"; is not that true?

A. We figure there are so many yards of bagging to the bale or to the pattern and so many ties, and we estimate the number of bundles of ties and number of rolls of bagging, and ship it that way.

Q. Then if a man would order from you as a dealer a thousand patterns, that would not mean that you would cut it off a roll

716 and roll it up in patterns; it just means that you would figure how much bagging and how many ties were required to wrap a thousand bales of cotton, and would just ship it to him in bundles and in rolls, like the trade usually handles?

A. Yes.

Q. That is all there is to that expression " patterns," is it not?

A. Yes.

Q. That is what I wanted to get clear.

A. I might say that the retail dealer, who is selling an individual farmer, bagging and ties, if he comes in and wants three patterns of bagging and ties, or four patterns, or anything else than an

original roll or bundle, of course, he would have to measure off a certain number of yards, and open up a bundle of ties and count out so many for him, but the question you asked now, I understand, applied to the jobbing.

Q. I understand in some sections it was a practice prevailing of selling it in patterns.

A. Well, we sell a good deal of ties and bagging by the pattern. The ginner or the merchant wants to know just how much it is going to cost him per pattern per bale, and if he wants it
717 figured out, we do that, and instead of selling it by the yard and by the bundle, we will figure it is so much per pattern, six yards of bagging or seven yards, whichever he uses, and so many times.

Q. I understood you to say awhile ago you thought the business had been handled for the best interests of all concerned by Warren, Jones & Gratz? Have you ever figured on what the result has been on other manufacturers of bagging; the methods that have been adopted—what effect that has had on the other bagging manufacturers in this country?

A. I have never figured on it, no, sir.

Q. Are you able to say what effect it has had on the general trade in bagging, from the standpoint of other manufacturers, like Ludlow and the Carolina Bagging Company, Southern Bagging Company—how they have been affected by the policy of requiring people to take bagging, if you allow them to have ties?

A. I could not speak from personal experience and knowledge, but I do know that those companies that you mentioned, have been able to dispose of their products, and they must have been able to get the ties to go with it or the bagging would not be worth anything.

718 Q. So far as you know, they have been enabled to dispose of it, but you don't know what amounts they have had to carry over?

A. Well, I know there have been times when they are out of the market. They are not quoting. They have none to offer. The presumption is that they have sold up, or they would still be quoting prices.

Mr. Roberts. Well, that is all.

Mr. Biggs. That is all. Much obliged to you.

(Witness excused.)

R. K. Wootten called as a witness in behalf of the defendants, being duly sworn, was examined and testified as follows:

Direct examination by Mr. Biggs:

Q. Will you give us your name, please, and your business and your residence.

A. R. K. Wootten. My home is Chickasha, and my business is cotton oil mill, cotton gins, bagging and ties and such stuff.

719 Q. How long have you been in that business?

A. About 20 years.

Q. Will you give us in a general way the extent of your business and the territory in which you sell bagging and ties, say during the past two years?

A. Oklahoma and Texas.

Q. The volume of your business, in a general way.

A. From three to four million yards of bagging per annum, ties enough to go with it.

Q. Ties enough to match.

A. It is something around $600,000.

Q. That bagging and tie business in your country is done together, is it not, as a general rule, in Texas and in Oklahoma?

A. Yes, sir; you mean the bagging and ties?

Q. Bagging and ties, yes, sir.

A. Oh, yes; they never buy ties without bagging or bagging without ties, unless they happen to be a little short of one or the other.

Q. You have been able to purchase, have you, during the past two years, the amount of ties that was required to go and that you needed in your business, to go with your bagging?

720 A. Yes, sir.

Q. What brand of bagging have you principally sold?

A. Ludlow.

Q. That is a brand of bagging made by the Ludlow Manufacturing Associates of Boston?

A. Yes, sir.

Q. Will you give an idea of what proportion of the bagging is Ludlow bagging that you sell and what proportion of your total amount?

A. Well, I believe—I have sold about, say, 75% of the bagging I have handled in the last two years has been Ludlow; 75% year before last, and I don't expect quite so much—possibly two-thirds last year.

Q. You have handled some bagging, have you, made by the American Manufacturing Company?

A. Oh, yes; I handled considerable bagging made by them.

Q. Where have you gotton your ties, say, in the last two years?

A. From Warren, Jones & Gratz, and from the Atlantic Steel Company.

Q. Have the ties that Warren, Jones & Gratz sold you been sufficient to go with the bagging that they sold you?

721 A. Yes, sir.

Q. Have they sold you any ties in excess of the amount that was required to go with your bagging that they sold you?

A. Yes, sir.

Q. Both years, 1916 and 1917?

A. I could not say as to 1916. I don't believe so, but in 1917, they did.

Q. Now, the ties that you bought from the Atlantic Steel Company?

A. Yes, sir.

Q. Were they used by you and were sold with the bagging that was manufactured by the Ludlow Manufacturing Associates?

A. Mainly.

Q. Can you give us approximately the number of ties that you bought from the Atlantic Steel Company during the past two years?

A. Why, about 100,000 bundles a year. I know I got a hundred thousand from them last year, and I think I might have gotten a few more than that in 1916.

722 Q. The most of that bagging and those ties from the Atlantic Steel Company were sold by you in Texas, were they not?

A. No, sir; most of them sold in Oklahoma, but sold a good many in Texas.

Q. Do you know whether the Ludlow Manufacturing Company sell ties?

A. They do.

Q. Do you happen to buy any?

A. They never have supplied me with any ties. Well, I believe they have, but not many—helped me out, possibly sometime. I have always made my contract for ties either direct with the factories, or with Warren, Jones & Gratz.

Mr. THOM. Can I have that question repeated?

(The question was repeated by the reporter as above recorded.)

Q. Now, the times that you have done business with the concern, Warren, Jones & Gratz, has there ever been any time that they required you to make a contract with them, or asked you to make a contract with them, which you would agree to handle exclusively their product?

A. No, sir; they never did ask such a question.

723 Mr. THOM. Note the same exception and the ruling reserved.

Mr. BIGGS. That is all.

Mr. THOM. No questions.

(Witness excused.)

MILTON L. BROWN was called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. BIGGS:

Q. Will you give us your name and your business, Mr. Brown.

A. Milton L. Brown, Brown & Brown, Mobile, Alabama.

Q. What is the character of your business?

A. We are jobbers of bagging, ties and grain.

Q. How long have you been in the selling of bagging and ties?

A. Personally, I have been a member of the firm for about 19 years.

Q. The other Mr. Brown is a brother of yours, is he?

A. Yes, sir.

724 Q. And during that time have you been handling bagging and ties?

A. Yes, sir.

Q. What is the extent of the volume of your business in bagging and ties?

A. It approximates about a million and a quarter yards of bagging, and ties to go with it, per year.

Q. Where is that product sold by you, and to whom, generally, and in what territory?

A. Florida, Mississippi, Alabama, and some in west Tennessee.

Q. Do you usually handle any more ties than is necessary to go with the amount of bagging?

A. I do at times, yes.

Q. State whether or not the business is usually done together—that is, your bagging and tie business is done together.

A. As a whole, we sell bagging with ties.

Q. To whom do you generally sell it?

A. To dealers, ginners, oil mills and to consumers.

Q. You are acquainted with the prices that have existed in the past several years on ties, aren't you, and bagging?

725 A. Yes, sir.

Q. Please state whether or not, taking a particular season, the price of those commodities has ever, as far as Warren, Jones & Gratz' prices are concerned and the American Manufacturing Company's prices—whether or not that was a stable price or whether or not it fluctuated to any extent during the particular season.

A. Very little fluctuation. Sometimes a little advance during the season.

Q. Are you able to give us any comparison of the prices of bagging and ties as compared to other steel products and other jute products? Do you know from your experience in your business with reference to such matters?

A. With reference to jute products, we are handling grain, and have occasion to buy sacks which are made up of jute, and these sacks have since the prewar period advanced possibly 300 per cent.

Q. What has been the advance on bagging in that same period?

A. About 33⅓ per cent.

Q. Do you handle the products of Warren, Jones & Gratz

726 exclusively, or do you handle any other lines?

A. We handle Ludlow's goods.

Q. You handle Ludlow's goods, too?

A. Yes, sir.

Q. Do you know whether the Ludlow concern sells ties?

A. They do not in our territory.

Q. Where have you usually obtained your ties to go with the Ludlow bagging that you have sold?

A. From Warren, Jones & Gratz.

Q. Now, Mr. Brown, considering your experience in the trade and the knowledge you had in reference to the manner in which the tie business has been handled by Warren, Jones & Gratz, and the prices charged for their product, I want to ask you whether that business, during the past three years, has been, in your judgment, handled to the best interests of the whole trade, both merchants and consumers?

A. I think it has been handled particularly to the interests of the consumer.

Q. Why do you say that?

A. Because the margin of profit for the jobber was small—too small.

727 Q. Well, that is from the jobber's standpoint, but now why, as far as the consumer and farmer are concerned?

A. Because he was protected by the amount that smaller quantities could be bought. I mean to say that he was protected by a less than carload price; that he could buy this same stuff from the manufacturer.

Q. Now, supposing that during that period Warren, Jones & Gratz had made contracts promiscuously for the sale of their ties, with everyone that wanted to buy them, such sales being made in their regular way, for future delivery, and not requiring a margin, and in any amount, regardless of the requirements of the purchasers, for their regular trade, and thereby sell their entire supply of ties at the opening of the market, what, in your judgment, would be the result on the price of ties to the consumer or farmer if the ties were all in the hands of dealers and Warren, Jones & Gratz had none to offer?

Examiner McCORKLE. That is objected to, and the same ruling as heretofore.

Mr. THOM. Another one before that.

Mr. BIGGS. I shall make no point about any testimony that
728 should be objected to. I will stipulate that an objection can be made to every one of them.

A. I think the price would have been higher to the consumer.

Q. Why do you say that?

A. Because it would have been in the control of a few jobbers, who would have been in a position to have exacted a higher price.

Q. During the period that you have done business with Warren, Jones & Gratz, have you at any time ever made a contract with them whereby you should handle their product exclusively?

A. We have not.

Mr. BIGGS. You may inquire.

Cross-examination by Mr. THOM:

Q. Mr. Brown, you made the statement that you thought the policy of Warren, Jones & Gratz, to the effect that they sell ties with bagging, was beneficial to the trade in general, and will you please state what effect it would have on competing bagging manufacturers?

A. Ask that question again.

(The question was repeated by the reporter, as above recorded.)

729 The WITNESS. To my own personal knowledge, they have never required the taking of ties with the bagging.

Q. I asked you on that assumption. His question was framed accordingly. Assuming that they had adopted that as a policy.

Mr. BIGGS I did not ask him that.

Mr. THOM. Well, I will ask him that.

By Mr. THOM:

Q. Assuming that Warren, Jones & Gratz control 60 per cent of the new ties of this country, and adopt a policy of selling ties only with American bagging, what effect would that have upon competing bagging manufacturers?

A. I don't know what effect it would have, except that it might require the purchase of ties from independent manufacturers.

Q. Would, in your opinion, the competing bagging manufacturers have as ready a sale for their output, if that policy was not attempted by Warren, Jones & Gratz?

A. Yes, sir; I think they possibly would.

Mr. THOM. No further questions.

(Witness excused.)

730 W. H. DAVIS called as a witness on behalf of the defendants, being duly sworn, was examined and testified as follows:

Direct examination by Mr. BIGGS:

Q. Please state your name.

A. W. H. Davis.

Q. Where do you reside?

A. Memphis, Tennessee.

Q. What is your business?

A. Wholesale grocers, Fly & Hobson Company.

Q. You are a member of the firm of Fly & Hobson Company?

A. Yes, sir; second vice president.

Q. You are in the business of selling bagging and ties?

A. Yes, sir.

Q. How long have you been in that business?

A. They were selling when I went with them, some 23 or 24 years ago.

Q. Where do you sell your bagging and ties?

A. In the territory adjacent to Memphis, probably in a radius of 250 or 300 miles.

731 Q. To whom do you sell generally?

A. Well, we sell to oil mills, ginners and farmers, planters.

Q. And in a general way, what is the volume of business you do in bagging and ties; that is, as to the number of ties and the number of yards of bagging that you handle per season?

A. We handle about a million yards of bagging and between 25,000 and 30,000 bundles of ties.

Q. You do not handle any ties then in excess of the amount that is required to go with your bagging?

A. Yes; our ties are higher than that. We handle—if you will let me explain it—in 1916, we handled some 37,000 bundles of ties and about 20,000 rolls of bagging. That is a million yards of bagging. During 1917, we handled about 14,000 rolls of bagging and 32,000 bundles of ties.

Q. That was more than the amount of ties required to go with your bagging?

A. Yes, sir.

Q. From whom did you purchase those ties?

A. Warren, Jones & Gratz.

732 Q. All of them?

A. All of them; yes, sir.

Q. In both 1916 and 1917?

A. Yes, sir.

Q. You handled the brand of bagging that is manufactured, did you, by the American Manufacturing Company?

A. Yes, sir.

Q. Do you handle any other lines of bagging besides that?

A. We do not; no, sir.

Q. In 1916, did you handle anybode else's ties besides those that were sold you by Warren, Jones & Gratz, or did you have any opportunity to handle any others?

A. I am not exactly clear, but I think we did. I think we bought some on the street. I won't be positive.

Q. In what year was that?

A. That was 1916.

Q. Do you know of other manufacturers, or representatives of other manufacturers of ties, like the Conners, Weyman Company or the Atlantic Steel Company?

A. The Atlantic Steel Company has a representative at

733 Memphis who tried to buy ties from me during 1916 and 1917.

Q. Tried to buy ties from you during those years?

A. Yes, sir.

Q. How have the prices been on bagging and ties in your experience, as to stability, during the past number of years—say, the past three years?

A. Well, prices have been very firm, as all steel articles have been. We handle nails and wire, galvanized wire, and all of those lines have been high.

Q. Has there been any fluctuation in the price of the bagging and ties handled by Warren, Jones and Gratz during the particular season?

A. No, sir; except the usual carrying charge.

Q. Which is a slight difference?

A. Yes, sir.

Q. What can you say in reference to the price of bagging and ties as compared with the prices of other jute products and other steel products that you handle?

A. Well, we buy second-hand jute sacks for flour and they are up about some 250 to 300 per cent. We originally bought those at about eight cents apiece.

Q. They are manufactured out of the same raw material! It is a jute product, is it?

734

A. Yes, sir.

Q. That the bagging is made out of?

A. Yes, sir; and ties I don't think have been up in proportion to what nails and galvanized wire have advanced.

Q. What would you say about the advance in the price of bagging?

A. Well, I am going to explain that. Jute bags originally cost us eight cents; they cost us now about 25 cents.

Q. Take cotton bagging, what has been the advance in that?

A. Well, it has not been near that, nothing like it. Some 25% would cover it.

Q. During this time did you have any experience trying to buy ties from any concern like the Conners, Weyman concern or the Atlantic Steel Company?

A. No, sir; we did not. We got all we needed from Warren, Jones & Gratz.

Q. Now, considering your experience in the trade and your territory, Mr. Davis, and what you know in reference to the manner in which this business was handled in 1916 and 1917 by Warren, Jones & Gratz, considering the prices that they charged for their products, I want to ask you whether that business, during that period, has been, in your judgment, handled to the best interest of the whole trade, both merchants and consumers?

735

Examiner McCorkle. That question is objected to and the same ruling.

A. Yes, sir.

Q. Why do you think that?

A. Well, I think the other jobbers there, handling the competitors' brand of bagging, would have asked three or four cents a yard higher for bagging, and possibly ten cents a bundle higher for ties.

Q. Now, assume on account of the price of steel, and the demands that are made on the steel manufacturers by the Government, and that have been made in the past two years, that by reason of this it has been unprofitable for the steel manufacturers to manufacture cotton ties as compared with their other steel products, and that they have not, by reason of these conditions in fact, manufactured their usual amount of ties, and that in consequence thereof, by reason of these conditions, it has at the beginning of the season, when the tie market opens, been difficult to know whether there would be enough ties manufac-

736

tured to wrap the cotton crop, which at that time is uncertain in amount—that is when the market opens—I want to ask you what, in your judgment and opinion, would be the effect on the tie market if the manufacturers should sell their product at the opening of the season to parties other than legitimate dealers in bagging and ties, who in turn sell to the merchant and consumer?

A. Well, I think the speculators would tie the market up so you could not get the ties.

Q. Would not that same result likely follow in the event the manufacturers sold their product to dealers of all classes, regardless of their requirements for their regular trade?

A. Yes, sir.

Q. During the period of years that you have done business with Warren, Jones & Gratz have they ever asked you to make a contract with them, or have you in fact ever made a contract with them in which you should handle their product exclusively?

A. No, sir.

Mr. BIGGS. That is all, Mr. Davis.

Cross-examination by Mr. THOM:

737 Q. Mr. Davis, are you a jobber?

A. Yes, sir.

Q. If the situation as expressed to you by Mr. Biggs, in which you made the reply that a jobber would raise the price, had arisen, would you have done it?

A. Well, I feel that we are all in business for all of the money we can get, but it has not been the policy of Fly and Hobson Company to raise the price out of proportion to the cost of the goods.

Q. Then there are some jobbers who would not raise the prices out of proportion to the cost?

A. Yes; you will find some that are fair. You will find a lot of cutthroats in it, too.

Q. Your answer is therefore, based upon the fact that if the ties and bagging got into speculative hands, it would be disastrous.

A. Yes, sir.

Q. But if it got into hands of companies like yourself exclusively, what would have been the situation?

A. Well, if it got into the hands of companies like ourselves, it would have been fair, but with some of the others it would not have been.

Q. So that it depends on what is the character of

738 the concern in whose hands it gets?

A. Yes.

Q. Now, are you in a position to state the effect of a policy assuming that Warren, Jones & Gratz control 60 per cent of the new cotton ties of this country, and adopt the policy of selling ties only with bagging, can you state what effect that would have upon the competing bagging manufacturers?

A. Well, from the past year's experience, it would have no effect whatever. They sold plenty of bagging in our territory without ties.

Q. Suppose it was testified by a bagging manufacturer that he was injured, would you feel that you were in a position to deny that statement?

Mr. Biggs. I think, your honor, that that would depend upon a great many contingencies. It would depend on who the manufacturer was, and whether or not Mr. Davis would be willing to believe what he stated.

Mr. Thom. Well, I will put it this way:

Q. Do you feel you are in a position to judge as accurately the effect on a bagging manufacturer's business, as the bagging manufacturer himself?

739 A. No, sir; I don't believe I would be.

Mr. Thom. That is all.

(Witness excused.)

Claude H. Hutcheson called as a witness on behalf of the defendents, being duly sworn, was examined and testified as follows:

By Mr. Biggs:

Q. Mr. Hutcheson, what is your full name?

A. Claude H. Hutcheson.

Q. Where do you reside?

A. Jonesboro, Georgia.

Q. How long have you lived in Georgia?

A. Fifty-two years.

Q. That is all of your life?

A. All my life.

Q. What is your business?

A. Bagging and ties, dealer, and I guess I could hardly term myself a manufacturer. I am a reworker of mill-run bagging and ties. Dealer in that and new bagging.

Q. And you also buy and sell new bagging and new ties?

740 A. New bagging and new ties.

Q. Do you manufacture what is known as second-hand ties? Do you rebundle ties?

A. Yes, sir, don't call it second-hand, but it is rerolled and rebundled. It is called better than second-hand. In reality it is second-hand bagging and second-hand ties, but I don't use that word.

Q. You think it sells better?

A. I coined that word myself, if you will pardon me, "rerolled."

Q. You are the author of that word. Now, explain to us, as long as you are in that business, exactly what is known as a rebundled tie?

A. A rebundled whole tie is a tie that has never been cut—never been to the compress—from the gin to the cotton mill, pulled at the buckle without being slipped. When it comes off it is still 11½ feet, the length of a new tie. Those ties are run through machines

to straighten them and clean the cotton off, or some of it, rebundle them, put them back in shape to sell them again.

Q. We have had the expression "whole piece ties." Explain exactly what they are.

741 A. Piece ties are made from cotton compress ties. A compress tie is 8 feet 2 inches or 8 feet 6 inches. Most of them are 8½ feet.

Q. After the bale——

A. After the bale is compressed. When it goes to the compress the compress will cut off three feet of each tie. A bale of cotton is tied with six bands. The compress will take those six pieces, three feet each, and make two additional ties, and a compressed bale has eight ties. They piece these three ties together to make two additional ties. Now, when that cotton goes to the cotton mill, some mills draw them at the buckle—most of them do not. They simply clip them, because the bale is compressed at high density. Then those ties I buy from cotton mills and other dealers and splice them and rivet them, make them 11 feet 6 inches. That is what we call a pieced tie.

Q. You fix up and sell piece ties, too?

A. As well as whole ties.

Q. What is meant by rewoven bagging?

A. Rewoven bagging—I am not a manufacturer of it, but it is bagging—rerolled bagging—that is my bagging. The cotton mill takes the wrap off the bale. It has got a couple of holes in

742 it, maybe two or three. That is shipped to me. If I can sew it up, I do so. If I can not, I cut out the places where it is cut—may take two pieces or may take three. It is considerable waste, however, in that. The scrap from that I ship to these manufacturers of rewoven bagging and they treat it up and make the rewoven bagging.

Q. What was the extent of your business in, say 1916 and 1917, Mr. Hutcheson, handling what you called rebundled ties and piece ties?

A. In 1916 I handled about 80,000 bundles of rebundled whole and rebundled piece ties, and I handled about a million yards of rerolled bagging. In 1917 my sales were a little over 120,000 bundles of ties and about a million and a quarter of bagging, giving me a surplus, say, of 60,000 or 80,000 bundles of ties more than——

Q. State whether or not that character of business is done by other people in the South?

A. Yes, sir; it is done by——

Q. By whom? Name some of them.

A. All right. Carolina Bagging Company, I expect are one of the largest. They make rerolled bagging and rebundled ties. The Greenville Bagging Company, Greenville, South Carolina;

743 Charlotte Bagging Company, Charlotte, North Carolina; Enterprise Manufacturing Company, Rockhill, South Carolina; Southern Bagging Company at Norfolk; Imperial Bagging Com-

pany at Norfolk; The Julius Freeland Company, Columbus; Columbus Bagging and Tie Company at Columbus; M. Sable & Sons of Montgomery. Now, Menty & Company of New Orleans make large quantities of ties, but not bagging. Now, those are the principal ones. Of course, there are other dealers—Atlanta Warehouse Company.

Q. Menty & Company sell sugar-bag cloth, do they not?

A. They do, and so do I. I sell new sugar-bag cloth, as well as secondhand.

Q. Are they made by other people outside of these concerns you named, like cotton gins?

A. For instance, in the Carolinas—I buy most of my stuff in Georgia and Alabama.

Q. You buy from whom?

A. From the cotton mills. I go to a cotton mill and contract for his entire year's accumulation, every pound of bagging he takes off his bales, and all of the ties are to be shipped to me and I process them, put them in shape to be shipped to the ginners and oil mills. Now, in the Carolinas, I only buy of a few mills in the Carolinas, because the Carolinas—North and South Carolina—a
744 large number of them pick out the best pieces of bagging and ties and sell to the ginners themselves, and I would only get the leavings, which I would scrap a greater portion of them. The same thing is true in Georgia. A number of the mills that will sell me their bagging, they won't sell me their ties. They will sell their ties direct to the ginners or oil mills, and the same is true in Alabama. A number of the mills sell the stuff right direct. The same pieces that go on a bale of cotton come back and are used again.

Q. From your experience as a handler of and dealer and manufacturer of these rebundled ties, I will get you to state if you are able to give us a fair idea of the number of rebundled ties that are used on the cotton crop, or that were used, say, in the years 1916 and 1917?

A. Well, 1916, I think that 3,000,000 bales of cotton and linters were covered by rebundled whole and rebundled piece ties. I think in 1917, a greater percentage, on account of the high price of ties. I thing 33⅓%, estimating the cost, the Government estimate of the crop of about 11,000,000 bales and the linters will run a little over a million bales. I think there would be fully four
745 million bales, 800,000 bundles of rebundled whole and rebundled pieces. I handled practically one-fifth of that myself.

Q. Are some of those ties sold by you in Texas?

A. Yes, sir; I sold Simmons 5,000 bundles. I sold Rotan——

Q. That is the Sherer Company of Waco?

A. Yes, sir. Now, I could have sold more. I might sell some ties or some bagging before the market opened, but when the market opens, until I have covered my trade, I don't know what my competitors have done while I have been sitting down.

Q. What do you mean by covering your trade

A. I mean going out and making a personal call on them myself and my salesmen, my general trade—I should say would represent 300,000 bales of cotton and my business will amount, new and second hand, to about 400,000 to 450,000 bales, in two weeks after the market has opened.

Q. Let me ask you during that first period when the market is opening, you have been selling bagging and ties together?

A. I will not sell any other way, until I have covered my
746 trade. I will sell piece ties, because they are all sold most anytime, but the rebundled whole ties, I won't offer to anybody until I have offered my trade and see, because my other competitors might have got in and sold before I got there, and after I have figured up, I will go to work and sell ten or five thousand.

Q. Ties, you mean?

A. Sell ties without bagging, or bagging without ties, either way, after I have seen my trade, or know that I am reasonably safe in offering. I always have some additional ties to offer, but I can not afford to offer them until I have been around and see, because I might find that some of these fellows had sold them bagging, and I could not sell him his ties until I had seen whether I was in position to take care of my trade.

Q. In your territory in the eastern part of the South the business is done together; is it as extensive as it is in the west?

A. Yes, sir; now, you speak of the word "pattern." When I go to a ginner, he wants to know what it is going to cost him per bale or per pattern. I figure the price to him, but I sell him by the
747 yard. I sell him by the bundle, but I have got to tell him what it will cost him to wrap the bale of cotton. While I don't sell him by the pattern, he knows what it is going to cost him, and it is practically the same thing as selling it by the pattern.

Q. But afterwards, after your regular customers are taken care of, the other bagging is sold without ties and ties without bagging.

A. Maybe to-day I will offer bagging, to-morrow I will not. Another thing, in selling the trade, the ginners take what they want and I take some changes. He may tell me "I want two thousand bales," and if the crop is short, he don't take but twelve hundred. I have got to find an outlet. I will sell a while, then quit and commence again.

Q. Now, Mr. Hutcheson, you have done business, have you, with the respondents, Warren, Jones & Gratz?

A. I have.

Q. How long have you done business with them?

A. Ten years. I don't remember the date—ten years or more.

Q. Have you bought ties and bagging from them?

A. I have.

748 Q. In the last few years?

A. Yes, sir.

Q. Just tell us what your experience has been in reference to your ability to get ties to go with your bagging?

A. Had no trouble whatever in getting all of the bagging and ties I needed to supply my trade, that wanted new bagging and new ties.

Q. Is the brand of bagging that is made by the American Manufacturing Company—has that been the new bagging you have usually sold?

A. Yes.

Q. You do not handle the so-called Ludlow bagging?

A. Practically none of it sold in my section.

Q. Do you know the Carolina Bagging Company?

A. I do, very well.

Q. They do business in your country, do they?

A. Yes, sir.

Q. They are located where?

A. Henderson. I have done a good deal of business with them.

Q. The quantity of ties that you have bought from Warren,
749 Jones & Gratz—you bought all of your new Arrow ties from them, did you?

A. No, sir.

Q. From whom else have you bought?

A. Atlantic Steel Company, Conners, Weyman & Company.

Q. When did you buy from them?

A. 1916 and 1917. I did not buy—I bought in 1916 from all three of them. In 1917, Warren, Jones & Gratz and the Atlantic Steel Company.

Q. How did you happen to buy from them in 1916 or 1917?

A. Well, in 1917, Mr. Brown told me that ties——

Q. Who is Mr. Brown.

A. Mr. Brown, of Warren, Jones & Gratz.

Q. This gentleman sitting here?

A. Sitting right here, yes, sir; that ties were going to be scarce, and he would rather I would buy my ties from the Atlantic Steel Company and the Conners, Weyman Steel Company, and he had seen them and they would sell me.

Q. Did he say that he had been to see them and asked them to sell you ties?

A. And asked them to sell me ties.

Q. What did you do?

751 A. I bought ties from the Atlantic Steel Company.

Q. And also from Conners, Weyman?

A. No, sir; I did not, because I could use from the Atlantic Steel Company, on local shipments, a good deal better than I could from the Conners, Weyman, because I could ship out in local territory to better advantage, because my business is principally in Georgia. While I have got some business in Alabama, I should say 80 per cent of my business is in Georgia, and on account of the slow delivery of the railroad it would have been a little bit dangerous to have shipped from Birmingham in less than carloads.

Q. Now, the ties that you have bought, say in 1916, from Warren, Jones & Gratz, state whether or not you sold them separately, or did you sell them with bagging?

A. I sold them without bagging—most of them.

Q. Did you carry over any ties from 1916 to 1917?

A. Less than a thousand bundles—500 or 600 bundles. Wait a minute. I carried over 20,000 bundles of rebundled old ties and 4,000 or 5,000 rebundled piece ties; less than a thousand new ties—567 bundles, I believe. I carried over about 20,000 bundles of whole ties.

751 Q. Now, this was in 1916 or 1917 that Mr. Brown asked you to go and buy your ties from the Atlantic Steel Company and Conners, Weyman?

A. Yes.

Q. Which was it?

A. 1916 and 1917.

Q. Were you able to buy all that you wanted from Conners, Weyman or the Atlantic, or did you have to come back and ask later on in the season Warren, Jones & Gratz to sell you?

A. In 1916 I got all I needed, but in 1917 the Atlantic Steel Company got short of coal and got where they could not fill my orders, and I had to come to Warren, Jones & Gratz for several thousand bundles of ties.

Q. That you needed?

A. That I needed to go with the bagging.

Q. They sold them to you?

A. They did.

Q. Did you buy any bagging at that time?

A. I did not.

Q. Now, Mr. Hutcheson, have you ever sold any ties in your business to the Carolina Bagging Company?

752 A. Yes, sir: I sold them 10,000 bundles of new ties in 1916. I sold them 18,000 bundles of rebundled old ties in 1917. Part of those I shipped to Texas for them. The balance was scattered all over Georgia, Alabama, North and South Carolina. I think those four States, possibly, and I bought a good many ties from those people.

Q. Have you bought ties from the Carolina Bagging Company?

A. Yes.

Q. What years?

A. In November, 1916, or December, I bought between eleven and twelve—twelve and fifteen thousand bundles of ties from them.

Q. Ties from the Carolina Bagging Company?

A. Yes; and in 1917 I bought 800,000 pounds of ties, which I made into piece ties, from them—enough to make possibly 16,000 bundles.

Q. That was in 1917?

A. In 1917.

Q. That would make how many thousand bundles?

A. I bought in 1917 from them enough material to make——

Q. 16,000 bundles?

A. 16,000 bundles.

753 Q. That material or stuff that was shipped to you from their mill?

A. From their mill; yes, sir.

Q. Did you buy any made-up ties in 1917 from the Carolina Bagging company?

A. I did not. I sold them 18,000 bundles. I bought those 800,000 bundles—had to after I had sold these ties to them.

Q. In 1913, you sold them 18,000 bundles of ties?

A. A little over. I sold them 18,000 bundles in the spring. Then in shipping time, they telegraphed me to ship them a few hundred bundles in addition, which I did as an accommodation.

Q. Now, what can you say about the stability of the price that Warren, Jones & Gratz has had—has sold their products at during both of these years—that is, taking a particular season?

A. They have been stable, very little fluctuation, except their carrying charges.

Q. Now, are you able to give us a comparison as to what the price of bagging and ties has been during this time, as compared with

754 other jute products and other steel products?

A. I don't deal in other steel products. Therefore, I could not give you.

Q. What can you say in reference to the price of bagging?

A. Well, on twine, I buy a good deal of twine, which I use in the manufacture of my rerolled bagging. In the last two years, it is up a hundred per cent—about that.

Q. How do you account for the fact, if you know, Mr. Hutcheson, that concerns like the Conners, Weyman Company and the Atlantic Steel Company, Pittsburgh Steel Company, have not wanted to make a sale of cotton ties in the past two years?

A. Conners told me it was more profitable to make something else.

Mr. ROBERTS. I object to it.

Q. What is your idea about it? What do you think is the reason they have not wanted to make them and have not made them?

A. Because it was not profitable.

Q. What do you say about the ability of manufacturers of

755 bagging, other than Warren, Jones & Gratz, if you know, to market their product in the last two years?

A. I think that they have managed to market all they had, without any trouble. I know, for instance, a broker at Dublin, Georgia, who is a broker, I know, for the Carolina Bagging Company and the Riverside Mills. I know he is Carolina this past year. I think he was for the Riverside, and he had to come to me for bagging, and I shipped and paid him a hundred dollars or so brokerage on bagging, where I shipped Warren, Jones & Gratz's bagging to south Georgia, which he could not get from the Carolina Bagging Company.

Q Now, take the year 1916, and the question of the supply of ties. I show you a letter, Mr. Hutcheson, dated October 18, 1916, and will ask you to state if you received that letter, and from this concern, the Pidgeon-Thomas Iron Company?

A. Yes; I received that letter.

Q. What is the name of that concern?

A. Pidgeon-Thomas Iron Company, Memphis, Tennessee.

Q. Who are they?

A. They are hardware merchants, sell iron, steel, tinplate, and other things.

736 Mr. Biggs. I offer that letter.

(The letter is as follows:)

"Pidgeon-Thomas Iron Co.,
Memphis, Tenn., October 18th, 1916.

Mr. Claude H. Hutcheson,
Jonesboro, Ga.

Dear Sir: We have the bunch of Arrow cotton ties, 5,000 bundles, bought from you thru Belcher Brothers of this city, and we would like you to bear same in mind, and help us dispose of them. If you are in the market at any time for Arrow cotton tie buckles, we have 50 tons used once, good as new; also 200 reels of #6 three-ply compress twine on reels or in coils of 100# each, rope form, 50 ends.

Yours, truly.

Pidgeon-Thomas Iron Co.,
P. Pidgeon, *Pres.*"

Q. Mr. Hutcheson, did you not buy some ties last year, in 1917, from Freelander and sell them to the Carolina Bagging Company?

737 A. 5,000 bundles, shipped them to Texas for the Carolina Bagging Company.

Q. I understood you to say a while ago that you had not sold them any in 1917?

A. Yes; I sold them 18,000 bundles in 1917. You asked me if I had bought any. I bought 800,000 pounds.

Q. Do you know what price was received for the bagging that went with those ties?

A. They told me 14 cents.

Q. Who told you that?

A. Mr. Goldstone, of the Carolina Bagging Company.

Mr. Thom. I object to that as entirely hearsay.

The Witness. Mr. Goldstone is secretary and treasurer.

Examiner McCorkle. That is entirely irrelevant.

By Mr. Biggs:

Q. You have been doing business with Warren, Jones & Gratz, and have had a good deal of experience with the way they have handled their business. I want to ask you your opinion, considering

your experience with them, whether or not, as far as their dealings with you are concerned, they have always been fair in their business dealings?

758 Examiner McCORKLE. This question and answer is objected to for the same reason as stated to similar question asked preceding witnesses.

Q. Now, considering your experience in the trade in your company, and the knowledge that you have in reference to the manner in which this tie business was handled by Warren, Jones & Gratz, and the prices charged for their products, I want to ask you whether their business during the past three years has been, in your judgment, handled to the best interests of the whole trade, both merchants and consumers?

A. It has to the consumer.

Q. Why do you say that?

A. Because if ties, when the market opens—if they sold them to the speculators we would have had much higher prices. From my standpoint it would have been better to have sold them to the speculators, because I have 120,000 to sell, and if it would have been thrown in the hands of speculators I would have gotten more for my ties.

Q. You doubt whether or not it was of substantial interest to the dealers, as far as the money standpoint went, but to the consumer you think it was to their very best interest?

759 A. Decidedly their best interest.

Q. Now, we will assume that on account of the price of steel and the extraordinary demands that were made on the steel manufacturers by the Government in the past two years by reason of these facts, it has been undesirable and unprofitable for steel manufacturers to manufacture cotton ties, as compared with other steel products, and that they have not, by reason of these conditions, manufactured their usual amount of ties; and that in consequence thereof, by reason of these conditions, it has at the beginning of the season, when the tie market opened, been difficult to know whether there would be enough ties manufactured to wrap the cotton crop, which at that time is uncertain in amount, I want to ask you what, in your judgment and opinion, would be the effect on the tie market if the manufacturers should sell their product at the opening of the season to parties other than legitimate dealers in bagging and ties, who in turn sell to merchants and consumers?

A. The price would have been higher.

Q. Why do you think that?

A. Because the speculators would have made it high.

Q. Suppose that during that time that Warren, Jones &
760 Gratz had made their contracts? Do you understand the kind of a contract that they make to the trade?

A. Yes.

Q. If they had made those contracts promiscuously for the sale of ties to everyone that wanted to buy, making those sales in their regu-

lar way, for future delivery, not requiring a margin, and in any amount, regardless of the requirements of the purchasers for their regular trade, and thereby sell their entire supply of ties at the opening of the market, what, in your judgment, would be the result on the price of the ties to the consumer or farmer if the ties were all in the hands of dealers and Warren, Jones & Gratz had none to offer?

A. Would be much higher.

Q. Mr. Hutcheson, during this period of time that you have been in business with Warren, Jones & Gratz, have they ever made a contract with you or requested that you make a contract by which you would handle their goods exclusively?

A. They have not.

Mr. BIGGS. That is all.

Cross-examination by Mr. ROBERTS:

761 Q. Mr. Hutcheson, how do those prices of piece ties and rerolled ties and rerolled bagging compare to the new ties and new American bagging?

A. They have varied the past season about 25 to 30 cents a bundle cheaper than the other—and the new ties, because from my standpoint, I have a big stock of them. I want to convert them into money rather than carry over. I had carried over 20,000 the year before. The previous year, 1916, the difference was about 15 cents a bundle, and about 1915 they were about 10 cents a bundle. In other words, as ties got higher the difference widened. At least I say widened; I widened it.

Q. You fixed the price of these ties yourself?

A. No, sir; I don't fix it, because I make my price after the price of new ties are made. If some other fellow offers them lower, I let him sell his stuff.

Q. Don't you keep the same sort of relation to the piece-tie business and the rerolled business that Warren, Jones & Gratz do?

A. No.

Q. Aren't you the market?

A. No; because the average manufacturer of rerolled bagging sells his product lower than I do; because I make a better grade of stuff. That is what I tell the trade. I make them believe it.

762 Q. What does the Carolina Bagging Company say about yours being better than his?

A. He told me I make the best second-hand bagging he ever saw. He said as good as his rewoven.

Q. You just patch yours and he reweaves his?

A. No; he patches his too. He makes the same kind of bagging I do, second-hand bagging just the same, and then his waste he pieces it up and spins it. I sell him waste.

Q. You have a machine to reroll ties?

A. Yes, sir.

Q. Do you repaint them?

A. No, sir; sometimes I clean the cotton off them. They process on my wheels, but the last year I didn't do it, because there were a good many piece ties and pretty hard to keep them from tieing up my process, and after I bundle, I take a wire brush like the butchers use on a meat block to clean it off with. I kind of get on the outside and get it where it looks fairly respectable, and ship it out. Then when it gets too busy in the middle of the season, I ship them out—don't stop to clean them. They give satisfaction. I sold Mr. Simmons 5,000 bundles under a guaranty that I would replace every ties that breaks. I had no complaints from him.

763 Q. These piece ties, I believe you stated, were being more largely used each year than heretofore?

A. Rebundled whole ties have been used larger and rebundled piece ties are used, too, but if they could buy rebundled whole ties, why, the manufacturer—if we could get them, we get all we can—the manufacturers would not make and many as they do.

Q. The piece ties don't sell for so much as the others?

A. No; the price varies. Away back in 1915, I suppose the difference was 25 cents a bundle.

Q. You mean the piece ties are very much cheaper?

A. Than rebundled whole ties; yes, sir. The past season the price varied from 40 to 60 cents in some instances.

Q. Those ties that you bought last season from the Carolina Bagging Company—all you bought from them was just material to make——

A. No, sir; bought the manufactured ties.

Q. You bought the manufactured ties and enough stuff to make 16,000?

A. Well, I can tell you exactly. I bought 12,990 bundles. I bought 10,000 from them at Henderson, and 2,210 bundles that they had bought from a party at Greenville. I had sold him

764 5,000 the year before. He had 780 bundles of those, wasn't ordered out. I bought my own ties back from him. Then I bought material to make 16,000 bundles.

Q. Did you state a while ago about the amount of cotton that was wrapped with these ties and rerolled ties? I think you did. That was not based on any statistics or any figures in your possession, more than just a general estimate?

A. Well, from conversations with Carolina, Greenville and Charlotte of how much stuff they sold last season and what they are going to put up this season—add those together and make some allowance for the cotton mills that I know sell back to the consumer, and of course I give that as my idea, and I think it is conservative, that the present crop has been practically 4,000,000 bales covered with rebundled whole and rebundled piece ties.

Q. Have you dealt pretty largely with Warren, Jones & Gratz?

A. Yes, sir.

Q. Have you bought their bagging pretty largely—the American bagging?

A. Yes, sir.

765 Q. I believe you stated they never had required you to buy bagging, in order to get the ties?

A. No, sir; never did.

Q. What do you think of the Ludlow bagging as compared to the American bagging?

A. No better.

Q. Which is the most popular in the trade?

A. The American in my territory, because the other is not sold there at all. In south Georgia—I don't do but very little business in south Georgia, because I dispose of my stuff before I get down there.

Q. You spoke awhile ago about the piece ties being used so largely. Is it not a fact that you never have been able to sell many piece ties in Texas and Arkansas, and that part of the country? Is there not a general understanding that they are not popular out there—piece ties?

A. I have never sold any in Arkansas. Yes; I have shipped piece ties to Arkansas within the last year. Had a contract—a large contract. I have shipped piece ties to Texas.

Q. Small quantities?

766 A. No; I shipped 3,500 bundles to Blair and Hughes at Dallas, Texas, several years ago, on which they made a dollar a bundle, they told me.

Q. You did not sell any this past season?

A. No; did not.

Q. You did not sell any in Texas the past season?

A. No.

Q. You did not sell any in Oklahoma the past season?

A. I never have offered any in Oklahoma, because the principal part of my business is in Georgia, Alabama, and if I have got a surplus of ties to offer, I never offer ties in Texas or anywhere else, until after I have supplied my home demands. Then, if I have a surplus—for instance, I sold Mr. Simmons 5,000. I sold Sherer Company 5,000. They wanted more. I did not have them, because I had to first take care of my own trade.

Q. I believe you stated that eighty or ninety per cent of your business was in Georgia.

A. Eighty per cent, I should say.

Q. The balance of it in Alabama?

A. Alabama, yes, sir; some in Texas, a little in South Carolina, a little in Tennessee—very little in Tennessee, though. I ship some stuff to Mississippi, and I ship it to Alabama, and I ship it to

767 Tennessee and I ship it to Arkansas. Buckeye, I call that——

Mr. Biggs. What is Buckeye?

The Witness. Buckeye Cotton Oil Company.

Q. Where is it located?

A. The purchasing agent in our district is at Atlanta. He buys for those points.

Mr. ROBERTS. Well, that is all, I believe.

Examiner MCCORKLE. Is that all of the witness, Mr. Biggs?

Mr. BIGGS. Yes, sir, your honor.

Examiner MCCORKLE. We will adjourn and meet to-morrow morning, promptly at half past ten o'clock, and if you have somebody else, we might come up here.

Mr. BIGGS. I have no more witnesses.

EXAMINER MCCORKLE. You wanted the dates for the 18th and 19th?

Mr. BIGGS. Of course the cross-examination has been much shorter than I anticipated. I thought when I wrote you that it would require two days. At that time, I thought we would have some record testimony from our St. Louis office, but since then we have concluded to take our letters and records and that sort of
768 thing that we want to put in, from Warren, Jones & Gratz, and we will put them in at the New York hearing, which will be the only hearing we desire to hold.

Examiner MCCORKLE. We might adjourn until to-morrow morning at 9 o'clock, with the understanding that unless Mr. Biggs informs me that he wants some other witnesses, we will adjourn until the time of the New York hearing.

We will meet here to-morrow morning at half past nine o'clock. This hearing is adjourned.

(Whereupon, at 4.17 o'clock p. m., the hearing was adjourned until to-morrow, Tuesday, February 19, 1918, at 9.30 a. m.)

(Parties met pursuant to adjournment at 9.30 o'clock a. m., February 19, 1918, at which time a further adjournment was taken, subject to the call of the Commission.)

769 Before the Federal Trade Commission.

FEDERAL TRADE COMMISSION
v.
WARREN, JONES & GRATZ ET AL. } Docket No. 12.

New York, City, N. Y., April 5, 1918.

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771 Federal Trade Commission vs. Warren, Jones & Gratz.

NEW YORK, *April 5, 1918.*

Met pursuant to notice at 10 o'clock a. m.

Before: Mr. George McCorkle, examiner.

Present: Judge Roberts and Alfred P. Thom, jr., for the Federal Trade Commission.

Appearances: Mr. Thomas F. Magner and Mr. Davis Biggs, for respondents.

I. W. JENKS, called a witness in behalf of the respondents, being first duly sworn, testified as follows:

Direct examination by Mr. MAGNER:

Q. Mr. Jenks, what is your business?

772 A. I am general manager of the bar and hoop department of the Carnegie Steel Company.

Q. Where do you reside?

A. Pittsburgh.

Q. Where is your office or place of business?

A. Pittsburgh.

Q. The department which you have charge of in the Carnegie Company has charge of the manufacture of the ties that cover the bagging for the cotton?

A. Yes, sir.

Q. Do you remember the condition of the market with regard to cotton ties in 1914 and the year previous thereto—previous to the outbreak of the war?

A. Well, I don't just remember those years, any more than it seems to me that we had quite a lot of ties that year. Business was not very good—1913 and 1914, did you say?

Q. Yes; take 1913 first.

Judge ROBERTS. Now, if the court please, I do not think the years 1913 and 1914 are involved in this case. That was before the act was passed. I do not think that the conditions which prevailed then are admissible.

773 Mr. MAGNER. I am not asking him to testify to it, except generally, for the purpose of making a comparison, which afterwards I will ask him particularly to testify to.

The WITNESS. 1913 and 1914 were two of our largest years.

By Mr. MAGNER:

Q. The year 1914, the cotton crop, as I understand, was a very large crop?

A. I am sure I don't know.

Q. You know, of course, that the war broke out in that year?

A. Yes, sir.

Q. Now, in 1914, what was the condition of the market of for cotton ties as compared with the two previous years? Were there more or less manufactured, and were the prices higher or less?

A. As far as the Carnegie Steel Company is concerned, we manufactured more, but what their prices were, I don't know. I am not very familiar with the prices.

Q. You know what the effect of the war and the use of steel by the Government and others for governmental purposes,
774 from the years 1914 and since was, do you not, on the price of steel?

A. Oh, yes; the steel advanced very rapidly until the Government took control, and they have now fixed the prices of steel.

Q. How would that affect the price of the manufactured ties?

A. So far as I know it did not affect it at all.

Q. How did it affect the manufacture of the ties?

A. It restricted it, because we could not get enough raw material. The Allies at that time, in 1914 and 1915, began to draw on us very heavily for steel, and, of course, the last year or so our own Government is getting more and more, all the time.

Q. Do you know what effect it had on other steel manufacturers who were engaged in the tie business?

A. It had this effect: that there was a good deal of what I will call more profitable hoop business in the market than we could anticipate out of the cotton ties.

Q. And the consequences was that the manufacturers went into other lines than ties?

A. Yes, sir. One company dropped ties entirely.

Q. What company was that?

A. Sharon Steel Company.

Q. Had they been an extensive manufacturer of ties pre-
775 vious to that?

A. Yes, sir; right from the time which they built their mill, which I have forgotten now. They were always considered fair tie makers; say about three or four hundred thousand bundles a year.

Q. And from that time, they manufactured none?

A. Manufactured none.

Q. Do you know whether the other manufacturers, engaged in making ties, manufactured a lesser quantity from 1914 on?

A. As far as I know, they did. Just what proportion I do not know.

Q. You know they did it, but the amount of it you do not know?

A. Yes.

Q. What was the effect of that upon the price of ties?

A. Well, as far as I know, it had a tendency, of course, to raise the price, but the Carnegie Steel Company, as far as I know, has always tried to keep the market steady, and if ties get too scarce, why, I would immediately get some orders from Mr. Gratz, and insist on

getting more ties to supply the market, as it came along, in one location or the other, as it demanded the ties.

Q. As you found out the ties were becoming scarcer, by the
776 reason of the fact that other manufacturers did not manufacture them, you were requested and you carried out the request to manufacture more ties than ordinarily you would have done?

A. Yes.

Q. And in manufacturing those ties, did or not the Carnegie Company suffer a loss, in what they could manufacture hoops in your department, at a higher profit than the manufacturer of ties?

A. Yes, sir; considerable loss.

Q. Can you tell us the proportion or relative value of hoops and ties, during those years?

A. At the time—let us see. Would it be in the end of 1916, until the Government established the price—we were selling hoops at 4¼ to 4½ cents. Some of our competitors I think were cutting this—6¼—probably more than that.

Q. Hoops or ties?

A. Hoops. As far as I konw, the cotton tie price remained the same.

Q. And the hoops advanced from 100 to 200 per cent?

A. Oh, yes.

Q. In some instances 300 per cent?

A. I do not know. I would want to figure a little on the
777 three hundred.

Q. You know it did to the extent of 200 per cent?

A. Yes; it went out of all proportion.

Q. And the Carnegie Company kept the price of ties at the price that you have named?

A. It had that effect.

Q. The Carnegie Company established the price?

A. Yes, sir.

Q. And the others had to follow the price that you made?

A. Then the price was helped, by being able at whatever cost it was to us, to give Mr. Gratz enough ties to hold that market.

Q. And you did that?

A. Yes, sir; every time.

Q. In doing that, were you frequently during those years solicited by Mr. Gratz to increase your output of ties?

A. Oh, yes.

Q. Were you urged by him to even take a loss, in increasing your out put in ties, in order that the cotton crops might be covered?

A. Yes, sir; and he has argued all the time before our officials the importance of taking care of that crop and any——
778 Q. At all hazards?

A. Yes, sir.

Q. Did he explain the necessity from a national standpoint, namely, the necessities of the Government and the necessities of the financial conditions of the country, if the cotton crop were not covered?

A. Yes, sir.

Mr. THOM. In that connection, I think it fair to ask him whether he was present at those interviews or whether or not this is simply hearsay.

Mr. MAGNER. I am going to ask him to detail conversations.

By Mr. MAGNER:

Q. You heard those conversations?

A. Some of them.

Q. With whom were those conversations had?

A. They were had with our sales department, and in one or two cases with our former president, Mr. Dinkey, and also with our president, Mr. Williams, had in one case, explaining the value of the cotton crop. All the value of the cotton ties was nothing to the value of the cotton crop if it could not be taken care of in season.

779 Q. And the disastrous consequences to the country if it were not taken care of?

A. Yes, sir. Now, I think it was about two years ago Mr. Gratz got me on the telephone. He was up in some wild place, up—I don't know—around St. Paul, and he must have ten thousand bundles of ties immediately. Now, I did not ask any questions. I understood that in some location there was more cotton than they had anticipated. Now, I turned three mills besides our regular cotton-tie mill, and I think—I wouldn't be sure—that I got those ten thousand out in about 36 hours, but everything was laid on the side to get those cotton ties to take care of that crop. It was not a question of whether the other fellow did not make them. We had got to take care of them.

Q. And you did that at the instance of Mr. Gratz?

A. Yes, sir; I relied on Mr. Gratz all of the time; that is, he guided me how many to make and when to make them.

Q. That happened after 1914 during the years 1915, 1916, and 1917?

A. Yes, sir; I think that was in 1916. I am not sure. Mr. Gratz would know.

Q. But it has been happening repeatedly, all along, since the outbreak of the war?

780 A. Yes, sir. I do not know whether I am right. I might say this to show you the importance of the Carnegie Steel Company—what they really think of the importance of the cotton-tie business: Our president said to me three or four weeks ago—I consulted him about changing one of our mills that were running cotton ties into another line of work—going into Government work, and it was very important. My instructions were "Jenks, don't take a chance on cotton."

Q. More important than any other Government work?

A. That is the way we have looked at it.

Q. That is the policy of the company?

A. Yes, sir.

Q. That has been the policy of the company that has been urged by Mr. Gratz?

A. Yes, sir; absolutely.

Q. Mr. Jenks, can you tell us about how many tons of steel the Carnegie Company manipulated or manufactured per year?

A. Total output?

Q. Total output.

A. Well, it is something in the neighborhood of seven millions.

Q. Of tons?

A. Yes, sir; seven millions of gross tons.

Q. How much of that is cotton ties?

781 A. Why, we manufacture as an average 30,000.

Q. Tons?

A. Yes, sir.

Q. 30,000 gross tons, out of 7,000,000

A. Cotton ties, which would run about a million and a quarter bundles of cotton ties. We could lose that business and never miss it.

Mr. MAGNER. That is all.

Mr. THOM. No questions.

Mr. MAGNER. I will call Mr. Connors.

G. W. CONNORS, called as a witness in behalf of the respondents, being first duly sworn, testified as follows:

Direct examination by Mr. MAGNER:

Q. Where do you reside, Mr. Connors?

A. Birmingham, Alabama.

Q. You are of the firm of Connors-Weyman Steel Company

A. Yes, sir.

Q. You are an officer of that concern?

A. Yes, sir.

Q. You are engaged in the manufacture of cotton ties, and have been for a number of years?

782 A. Yes, sir.

Q. And were previous to it and since 1914?

A. Yes, sir.

Q. Previous to 1914, didn't your concern manufacture more ties, or less than since that time?

A. We made more.

Q. Have you any data that you can give us as to the quantity that you manufactured, previous to it and since that time, or the proportion of it

A. Well, for the past six years, our average is 145,000 bundles of ties. In 1914, we only made 103,000 bundles of ties. In 1915, about 215,000 bundles of ties, and in 1916 about 103,000 bundles; in 1917, 72,000 bundles of ties.

Q. Now, since the outbreak of the war, the manufacture of cotton ties by your company, has been less than previous?

A. Yes, sir.

Q. What is the reason for that

A. Well, the principal reason that we could get more for the other products, for hoops, than for the cotton ties.

Q. What is the relative increase in the price of ties and hoops since 1914?

783 A. The average for the three years—let us see: 1915, hoops were worth $5.65 per ton more than ties. In 1916, about $5.70, and in 1917, $9.77 more than ties.

Q. It is the same material

A. Yes, sir; it is all hoop.

Q. All hoop?

A. Yes, sir.

Q. And it is practically the same cost to manufacture?

A. No, sir.

Q. What is the difference

A. Well, we figure ties cost us about two to three dollars per ton more than hoops.

Q. To manufacture?

A. Yes, sir.

Q. So that in 1917, the difference in the price of ties was $9.77, in favor of the hoops?

A. In favor of the hoops; yes, sir.

Q. And the cost of manufacture was $2.00 and something less?

A. Yes, sir.

Q. That would make $11.00 and something a ton difference?

A. Yes, sir.

Q. And that price was productive enough to your concern to manufacture the hoops and not the ties?

784 A. Yes, sir.

Q. By reason of it you decreased the amount of the manufacture of your ties?

A. Well, that was not the sole reason of our decrease.

Q. That was one reason?

A. Yes, sir; one reason.

Q. What other reason?

A. The other reason was on account of the shortage of the cotton crop and the large amount of secondhand ties, that the customers that we regularly sell required very much less in ties, and they fooled us in that way.

Q. The territory that you have supplied was, largely, during these years—largely used the secondhand ties?

A. Yes, sir.

Q. And you supplied the territory, practically east of the Mississippi, all of it?

A. Well, we sell anywhere to our regular customers. We have some in different sections of the South—almost all over the South.

Q. But the principal part of it is east of the Mississippi?

A. Yes.

Q. The very largest part of it?

A. Oh, yes.

785 Q. And after the price of the hoops had gone up so much and the cotton price not so much, why, you merely sought to furnish ties to those that were your regular customers?

A. Yes, sir.

Q. You did not look to extend your business at all?

A. No, sir.

Q. In fact, it cut down after that time?

A. Yes, sir.

Q. Now, do you know Mr. Charles F. Brown?

A. Yes, sir.

Q. Do you know that he is connected with the American Manufacturing Company and with the firm of Warren, Jones & Gratz?

A. Yes, sir.

Q. And have known so for many years?

A. Yes, sir.

Q. Did Mr. Brown call to see you during the years 1914, 1915, and 1916, stating that he came from Mr. Gratz, and urge you to have your concern make more ties?

A. Yes, sir; I remember that he was—in fact, he came—I usually saw him annually, sometimes oftener; but I remember particularly that he wanted us to make more ties during those years.

Q. Representing Mr. Gratz, of the firm of Warren, Jones

786 & Gratz?

A. Oh, yes; representing Warren, Jones & Gratz.

Q. Did he give the reasons why he wanted the additional number of ties to be made by your concern?

A. Well, he stated that there would likely be a shortage of ties on account of some of the tie manufacturers declining to make ties, and it was throwing too big a load on Warren, Jones & Gratz, and asked if we could not, being right in the center of the territory, relieve the situation, and I took his view of it and told him we would be very glad to do it, so far as we could relieve the situation, and we did make additional ties on that account.

Q. The reason for that was to steady the market and, naturally, to hold the price of ties down?

A. Yes, sir.

Q. And prevent speculators from getting in——

Mr. THOM. I suggest that you are leading the witness considerably.

By Mr. MAGNER:

Q. Well, was that the effect of it?

A. In a measure, I think it was.

787 Mr. MAGNER. I am doing it merely to facilitate matters, Mr. Thom, and hope you will check me if it is not according to the rule.

By Mr. MAGNER:

Q. It had that effect?

A. Yes, sir.

Q. Now, Mr. Connors, do you remember Mr. Brown on one of these occasions asking you to sell ties to a customer of theirs, Claude Hutchinson?

A. Yes, sir.

Q. You knew that he was a customer of Warren, Jones & Gratz?

A. Yes, sir.

Q. You know that he asked you to supply ties?

A. Yes, sir.

Q. In your neighborhood to their customers first?

A. Yes, sir.

Q. Did he ask you anything about the price, or stipulate any price or anything?

A. No; no price, of course, was mentioned there.

Q. Merely that you furnish these men with ties to relieve the situation?

A. Yes, sir.

788 Q. Asking you to take their customers off their hands for ties?

A. Yes, sir.

Q. And made no stipulation as to the manner in which you did it?

A. None whatever.

Mr. MAGNER. I think that is all.

Cross-examination by Mr. THOM:

Q. Mr. Connors, you have stated about a conversation with Mr. Brown. In what year was that?

A. I remember—I think that particular time that I sold Claude Hutchinson was in 1916 and 1917.

Q. That was the time when Mr. Brown asked you to increase your output?

A. Well, he has been rather, you might say, begging us to increase our output for some years.

Q. Did he ask you to increase your output in 1917?

A. Yes, sir.

Q. I believe you said that you were—he persuaded you that there was a necessity for that, and that you endeavored to do so?

A. Yes, sir.

789 Q. Mr. Connors, you stated just now—I either did not understand you or you did not understand the question. In 1917, you said that the price of hoops gave you a profit of $9.77 over that of ties?

A. Yes, sir; per net ton.

Q. Per net ton?

A. Yes, sir.

Q. And then you were asked as to the relative cost, to which you stated that the ties were $2.00 and some cents more than hoops?

Mr. MAGNER. Cost of manufacture.

A. Cost of manufacture, yes, sir.

By Mr. THOM:

Q. Would not that of necessity, however, be included in that $9.77?

A. Now, let me see, from a bookkeeping standpoint.

Q. In other words, instead of adding it on to the $9.77, it would be included in that?

A. Yes; I believe you are right there. It would be included in it.

Q. Therefore, your statement that in 1917 the profit, or the advance in price, would be $11 and something is not exactly accurate?

790 A. No; I guess I am wrong there. Our books show for the years 1915, 1916, and 1917 an average difference in favor of hoops of $7.00 per ton, taking the three years, upon an average. Now, then, our books also show that ties cost--which would not appear in this—that ties cost an average of $2.50 more per ton during those years more than hoops, so that $2.50 would be added to this $7.00, or would make $9.50 per ton more upon an average that we got.

Q. Why would that be added on your profit? If there is a difference of $7.00 on the average between the profit? I do not think it makes very much difference, either. I am trying to get at the exact way of finding it.

Mr. MAGNER. The fact that it is more in one case than another?

Mr. THOM. Yes, sir; I want to get at how he arrives at that. If, as I understand you to say, the profit of hoops is $7.00 over and above that if ties, would not the cost necessarily have to be figured in that before you arrived at the profit?

A. No, sir; but I did not say the profit. The difference in the selling price. Profit has nothing to do with it.

Q. That is what I was trying to get.

791 Mr. MAGNER. That is all, Mr. Connors. I will call Mr. Glenn.

T. K. GLENN, called as a witness in behalf of the respondents, being duly sworn, testified as follows:

Direct examination by Mr. MAGNER:

Q. Where do you live?

A. Atlanta, Georgia.

Q. What is your business?

A. President of the Atlantic Steel Company.

Q. The Atlantic Steel Company manufactures cotton ties, among other things, does it not?

A. Yes, sir.

Q. Did you, previous to 1914, manufacture cotton ties?

A. Yes, sir.

Q. And since that time you have manufactured some?

A. Yes, sir.

Q. In 1914 and previous, did you manufacture more or less cotton ties than since 1914?

A. The most we ever manufactured was in 1914.

Q. And since that time, has the supply that you have manufactured decreased gradually?

A. Yes, sir; to some extent.

792 Q. Now, will you tell us what the reason of that was?

A. Well, the reason was the decrease in the cotton bales made.

Q. In 1914, it was a very large crop?

A. 1914 was the largest crop we have ever had.

Q. You manufactured a large number for that——

A. Manufactured the largest number we ever made, about 450,000 bundles.

Q. How many did you manufacture in 1915?

A. I don't remember; about 400,000.

Q. It would be a guess?

A. It would be a guess.

Q. You know it is less, each year?

A. The price does not have anything to do with the number of ties we make. It is the crop.

Mr. THOM. The testimony has already been taken, to show exactly what their production was.

Mr. MAGNER. Yes; I remember that.

By Mr. MAGNER:

Q. Do you know that there were less ties manufactured by all of the manufacturers, with perhaps the exception of the Carnegie Company, after 1914? Do you know that, Mr. Glenn?

A. I don't know. I assume so.

793 Q. But you do not know?

A. No.

Q. Was there a demand on your concern for cotton ties, after 1914, as great as previous thereto, do you know?

A. Yes; 1914 was by far the largest year we have ever had.

Q. Well, we will take 1913. Was the demand upon you as great, after 1914 for cotton ties, as it was in 1912 and 1913?

A. I should say about the same.

Q. Did you manufacture more or less in 1915, 1916, and 1917, than you did in 1912 and 1913?

A. About the same; possibly a little more.

Q. What was the relative price of ties and hoops? Do you manufacture hoops?

A. Yes, sir.

Q. What was the relative price of ties and hoops, in 1915, as compared with 1916?

A. I don't remember.

Q. You don't remember that?

A. No; as I said, the price of ties does not have anything to do with the number that we manufacture.

Q. What is it that controls the output?

794 A. It is the demand of the trade. In other words, if the cotton crop is larger, we manufacture a larger number. If

it is smaller, we manufacture a smaller number. We have a certain trade that we supply with ties, regardless of the price.

Q. You did not try to increase your price in 1915, 1916, and 1917, on ties?

A. No; we supplied our normal quantity.

Q. Just the people you had previous to that time?

A. Yes.

Q. Demand had been made upon you by other people, outside of your regular trade that you received to take on?

A. Yes, sir; with some exceptions.

Q. Were there many exceptions?

A. No; not many.

Q. Now, do you know Mr. Charles F. Brown?

A. Yes, sir.

Q. He is employed by Warren, Jones & Gratz?

A. Yes, sir.

Q. How many years have you known him?

A. Oh, I have known him seven or eight years.

Q. Did he, during the years 1915, 1916, and 1917, call on you in regard to the tie question?

795 A. Yes, sir.

Q. Did he on those occasions urge you to have your company make more ties during those years, to supply the demand?

A. Yes.

Q. Did he give as a reason that the manufacturers were seeking to manufacture in such large numbers, because of the increase in price of steel, and the demands that were made by the Government and others for their steel goods?

A. Something to that effect.

Q. And urged you to ship ties to customers of Warren, Jones & Gratz?

A. Yes, sir.

Q. And take them off their hands?

A. Yes, sir.

Q. Was the Ludlow Manufacturing Company, manufacturers of bagging, one of your customers?

A. I think we sold them the first ties, about three years ago.

Q. You did sell them ties during that time?

A. Yes, sir.

Q. Been selling them ever since?

A. Yes, sir; we have sold them for the last three years.

796 Q. Did you not sell them previous to 1914?

A. No, sir; I don't think we sold them in 1914. It was 1915, 1916, and 1917.

Q. You know Mr. Gratz?

A. Yes, sir.

Q. Anderson Gratz?

A. Yes, sir.

Q. Do you remember having a talk with Mr. Gratz on the same lines in 1916?

A. Yes, sir.

Q. And Mr. Gratz urging you to have your concern make more ties, for the purpose of steadying the market and keeping down prices, and furnishing the various cotton ginners and others with ties?

A. Yes, sir; we sold at his request, I think, one or two of his customers, and have been for two years, I think.

Q. Did he stipulate anything about how you should treat them—that is, the price?

A. No, sir; one price for ties.

Q. Did he ask for any commission from you or any part of it?

A. No.

797 Q. For turning over his customers?

A. Just asked if we could supply some of his trade with ties, which we did in a few instances.

Q. And without any profit to him?

A. Yes, sir; so far as I know.

Q. Well, you know that your company did not make any agreement to give him part of what you got out of it?

A. No, sir.

Q. Did he on that occasion speak of the necessity of having the cotton crop covered?

A. Spoke of the necessity of everybody making a sufficient number of ties to cover the crop.

Q. Making personal sacrifices, if necessary?

A. That there might be a disposition on account of a disparity in the price of ties and hoops for some people to curtail their production of ties. I told him we were going to make our normal supply of ties.

Q. Did he also speak of the possibility of speculators coming in and cornering the market, and you must do all you could to prevent that?

A. Yes, sir.

Mr. THOM. I think you are leading him. Ask him what his recollection of the conversation was.

798 By Mr. MAGNER:

Q. What is your recollection of what Mr. Gratz said of the necessity, out of patriotic reasons, for the sake of the country?

A. Well, he mentioned in a general way, as I recall it, on account of the disparity between the prices of ties and hoops and other products, that the disposition on the part of the steel mills might be to curtail their production of ties, but that the cotton crop was an essential commodity, and had to be covered, and that we and all of the producers of cotton ties should make sufficient ties to cover the requirements.

Q. Even at the sacrifice of profits in other things?

A. Yes, sir.

Mr. MAGNER. Your witness.

Cross-examination by Mr. THOM:

Q. Mr. Glenn, what were the relative sizes of the crops for the years 1914, 1915, 1916, and 1917?

A. 1914, as I recall it, was the largest crop that was ever made. 1915 was a little smaller, and 1916 and 1917 have been quite small.

Mr. THOM. That is all.

799 I. W. COOPER, called as a witness in behalf of the respondents, being duly sworn, testified as follows:

Direct examination by Mr. MAGNER:

Q. Where do you live, Mr. Cooper?

A. Wilmington, North Carolina.

Q. What is your business?

A. Merchandise broker.

Q. Do you know Warren, Jones & Gratz?

A. In a business way. I never met Mr. Gratz until this morning.

Q. But you have dealt with them for some years?

A. The last five years.

Q. Through Mr. Brown—through Mr. Charles F. Brown— was it?

A. No; through the New York office.

Q. Do you represent them in your territory for the selling of ties and bagging?

A. Not bagging, but ties.

Q. Only ties?

A. Ties.

Q. Are you acquainted with the Carolina Bagging Company?

A. Yes.

Q. Do business with them?

800 A. Yes, sir.

Q. How long have you done business with them?

A. I think practically ever since I have been in the brokerage business, in 1913.

Q. Do you sell them Carnegie ties on account of Warren, Jones & Gratz?

A. Well, I sold them ties for Warren, Jones & Gratz. Of course, I don't know who made them.

Q. Through Warren, Jones & Gratz?

A. Yes, sir.

Q. Will you tell us how many ties you sold them for Warren, Jones & Gratz since 1914?

A. I have not got a complete record. I did not have time to get it up, but my recollection is I sold them in 1914 about 22,000 bundles; in 1915, about 10,000; in 1916, about 10,500; in 1917, 3,000.

Q. Did they ever ask to buy any more, and did you ever refuse to sell them?

A. No, sir; I have never refused to sell them. If they asked me for ties, sometimes when I could not get them right then, but I

think possibly every time I got them later for them. I offered them ties and they would not buy.

801 Q. You have offered them ties at times, and they did not buy?

A. Yes, sir?

Q. They were cash customers of you, were they not?

A. Yes, sir.

Q. Sold them so under instructions?

A. Yes, sir.

Mr. MAGNER. That is all.

Cross-examination by Mr. THOM:

Q. Mr. Cooper, I did not hear what company you say you are connected with?

A. I. W. Cooper Company, brokerage firm.

Q. At what point?

A. Wilmington, North Carolina.

Q. And you are at that point representing Warren, Jones & Gratz in the sale of their cotton ties?

A. Yes, sir.

Q. Did you represent them in the sale of their cotton bagging also?

A. No, sir; just the ties.

Mr. THOM. That is all, Mr. Cooper.

Mr. MAGNER. I will ask Mr. Connors to come back again.

802 GEORGE W. CONNORS, recalled as a witness, having been previously duly sworn, testified further as follows:

Direct examination by Mr. MAGNER:

Q. Mr. Connors, how was the price of ties made for the years 1915, 1916, and 1917?

A. They were made by the Carnegie Company.

Q. In what season of the year?

A. Usually about several months before the consumptive season.

Q. Generally in May or June?

A. Yes, sir; May or June.

Q. And as soon as the Carnegie Company had fixed the price or made the price for ties, that made the price all over the country?

A. Yes, sir.

Q. And your mill and the other mills had to take their price at such advantage as you would get by reason of the advantage in freight?

A. Yes; they set the pegs for us. In other words, the price was named by them and we could not get any more, unless there was a shortage of ties.

803 Q. If they had not made that price, what would have been the price in those years, as compared with hoops?

A. They would have been the same price. That is, as far as we were concerned. The three years, 1915, 1916, and 1917, the selling price of hoops at our mill was $7.00 per ton more than the price of ties. Now, if were going to make the price of ties, we would have

made the price of ties naturally the same as hoops, which would have been $7.00 per ton more.

Mr. MAGNER. That is all.

C. K. GLENN, recalled as a witness, having been previously duly sworn, testified further as follows:

Direct examination by Mr. MAGNER:

Q. Mr. Glenn, how is the price of ties made each year, during the years 1915, 1916, and 1917?

A. It was made by Warren, Jones & Gratz, or the Carnegie Company, or perhaps both. That is where we get our information from.

Q. Each year, they made the price?

A. Yes, sir.

Q. That is done in the months of May and June generally, is it not?

804 A. Yes, sir.

Q. As soon as that price is announced, you have to take that price, plus the advantage you have in freight?

A. Yes, sir.

Q. If that price had not been made by them, as compared with the price of hoops, what would have been the price of ties during those years?

A. I do not know. There was a whole lot of speculation in ties after they left the manufacturers, even during those years. The price of ties went way up.

Q. People——

A. Speculators.

Q. Who bought large quantities of ties, and held them for men who had bought the bagging without ties?

A. I don't know. I just know the price of ties was very much higher than the mill price during those years.

Q. People, of course, must have purchased from the mills?

A. Yes, sir.

Q. And who held them for a higher price, to people who of necessity had to buy of them?

A. Yes, sir.

Q. And those of necessity had to buy them were the fellows

805 who had the bagging and wanted to cover?

A. Yes, sir.

Q. Coming back again to the other question, if they had not fixed the price—the Carnegie Company or Mr. Gratz had not fixed the price relatively lower that hoops—if they had not fixed any price, what would naturally have been the price of ties as compared with hoops?

A. Very much higher.

Q. Higher than the price of hoops?

A. Higher than the price of ties. In other words, if the price of ties had not been fixed as low as they were, they would have been under normal conditions very much higher than they were actually sold at.

Q. That price was fixed by Mr. Gratz and the Carnegie?
A. Yes.

Cross-examination by Mr. THOM:

Q. Does it necessarily follow if any other manufacturer of ties had fixed the price that it would have been fixed as high as the hoops? Suppose your concern, for instance, was in the habit of fixing the price for the whole country. Would you have done what the Carnegie Steel or Warren, Jones & Gratz did?

A. No, sir.

806 Q. Or wouldn't you have put it higher?

A. I would have put it higher, because they were too low.

By Mr. MAGNER:

Q. Do you think it was too low?
A. Yes, sir.

ANDERSON GRATZ, called as a witness in behalf of the respondents, being first duly sworn, testified as follows:

Direct examination by Mr. MAGNER:

Q. Where do you reside, Mr. Gratz?
A. In Brooklyn.
Q. Brooklyn, New York?
A. Brooklyn, New York.
Q. What is your business?
A. Well, I am employed by the American Manufacturing Company as vice president and have general charge of that business. I am also a member of the firm of Warren, Jones & Gratz, in St. Louis, which, amongst other things does a cotton tie business, and has done it for the last forty-odd years.
Q. The American Manufacturing Company, among other products, manufactures cotton bagging?
A. The American Manufacturing Company manufactures about forty per cent of the bagging that is used around the cotton crop.

807 Q. Does that include both new and old bagging, or new bagging alone?

A. New bagging alone.
Q. Who are the members of the firm of Warren, Jones & Gratz?
A. My brother and myself; no one else.
Q. You are also, and your brother also, a stockholder in the American Manufacturing Company?
A. He is treasurer of the company and we are both directors. We are moderate stockholders. We own between us, oh, probably one-twentieth of the stock—something around five or six per cent.
Q. What other manufacturers besides the American are engaged in the business of manufacturing cotton bagging?
A. The largest is the Ludlow Manufacturing Associates, of Boston.
Q. What proportion of the new bagging do they manufacture?
A. I don't know exactly the proportion, but they manufacture,

ordinarily, something less than one-half as much as the American Manufacturing Company.

Q. Are there any other manufacturers who make new bagging?

A. There are no other manufacturers who make new bagging. There are a lot of people who tear up old bagging and re-
808 weave it into what is known as rewoven bagging and put up in rolls and sometimes sold as new bagging, but is made out of the material that is not fit for the purpose.

Q. Previous to 1914, was there much cotton bagging manufactured out of the rewoven material?

A. It has been increasing right along. I cannot exactly give the years, but I think they began about 1910, and have increased a little, straight along.

Q. During the years 1915, 1916, and 1917, what is your estimate as to the proportionate amount of cotton that was covered by the rewoven stuff?

A. I estimated and sent people around to investigate—figure that they furnished in each of those years about ten million yards, enough to cover at the gin 1,666,666 bales. That is estimated, understand, please, because I haven't access to their books.

Q. During all of the years that you have been a merchant and manufacturer, forty odd years, have you handled both cotton ties and cotton bagging?

A. In all of those years have either bought or sold cotton ties on commission. We were commission merchants in bagging up
809 to 1890. Since that time we have never dealt in bagging, but have only acted as officers of the American Manufacturing Company, selling their bagging. In recent years it has been to the advantage of the American Company to have us—to use our name for the business west of the State of Alabama, in the sale of goods—and we have, without real compensation from them, allowed that business to be carried on in our name, keeping separate books for the American Manufacturing Company sales in that territory.

Q. During that time you have also dealt in cotton ties?

A. We have been agents for the Carnegie Company, and have sold their ties since the formation of the United States Steel Corporation.

Q. How many years is that?

A. That is about—I think about 1900—be about 18 or 20 years.

Q. During recent years a custom has grown up among the manufacturers of cotton bagging to provide for ties for the bagging, has it not?

A. For a good many years we have sold the Ludlow Manufacturing Company a very large quantity of ties, making an agreement with them to supply them with ties along in the winter, the price to be fixed when the Carnegie Company set their
810 price at the opening of the cotton ties season. I sold the Ludlow Manufacturing Company 50,000 bundles of ties yesterday.

Q. We will come to that later. I am speaking now of the custom

that grew up. How long has that system of business been arranged between the manufacturers of bagging and the sellers of ties?

A. It is only, as far as we are concerned, been dealing with the Ludlow Manufacturing Company. The other manufacturers have usually been small concerns and mostly done by ties, or if they did we did not know it. Some have bought and some have not, so we can not call it a custom, other than the Ludlow Company.

Q. But apart from the custom that you have had with the Ludlow Company, what has been your policy with men who are engaged in bagging with supplying them with ties?

A. We sell anybody ties that comes for them, provided they are acceptable people. We don't care whether they manufacture bagging or don't. As agents of the Carnegie Company, we do the Carnegie Company's business the best we know how for their interest. I have been a commission merchant all of my business life, and it is a matter of honor to work for your principal, without any
811 other interests coming in, and I have endeavored to abide by that rule.

Q. Now, did you have during the years 1915 and 1916 any correspondence with the Ludlow people with reference to providing them with ties to go with their bagging, to be supplied to their customers of bagging?

A. We agreed in each of the years 1916 and 1915 to supply them with a very large amount of ties, and did so supply those ties, the intention being that they should have ties to go with their bagging that they sold their customers.

Q. Now, I call your attention to correspondence that you had with the Ludlow people, and ask you if thos' [handing papers] are copies of letters that passed between you? I want to say if you wish us to produce the originals we will do so.

A. These are copies of letters written to and from the Ludlow Company—Mr. Wallace, the president—and I got from him the originals and had these copied, certified the copy myself on the corner, then had a notary prepare and swear to it.

Mr. MAGNER. We will produce them.

Judge ROBERTS. We do not require it.

The WITNESS. I produced these copies from the originals within the last three or four months.

812 Mr. MAGNER. I will get in the record the substance of these without having them all copied out by the stenographer, and I will submit them to you.

By Mr. MAGNER:

Q. Now, will you tell us, in substance, what the correspondence between you and Mr. Wallace, of the Ludlow people, was in regard to furnishing them with ties to supply their customers with bagging?

A. Early in January, 1915, Mr. Wallace wanted me to give him an option on 150,000 bundles of ties, until the opening of the market.

Q. Give you as the agent of the Carnegie Company?

A. As the agent of the Carnegie Company, and I told him that I thought he ought to come down to something less in ties as they were very scarce. I told him how many ties they had—how many they thought they could make and that he was asking for too large a proportion.

Q. You say you told him how many ties they had? What do you mean?

A. I mean I wrote him their entire stock of ties on hand the 11th of January is about 330,000 bundles, and I thought when he was asking for 150,000 of those he was asking for too large a proportion.

813 Q. In correspondence with the amount of bagging that his company made?

A. In proportion to the whole supply of ties, because if he had so many there would not be enough to go around, and the market would get out of hand.

Q. In other words, that his proportion of ties was larger than his proportion of bagging he had to supply to his customers?

A. Compared with the other manufacturers' bagging.

Q. What was the result of your conversation with him and correspondence?

A. The result was that I gave him the option for 150,000 bundles, and presently sold him 50,000 more.

Q. 200,000?

A. 200,000; so that before there was any use for ties at all he had 200,000 bundles of ties that we had sold him, plus a considerable stock carried over in Galveston, plus some times that I understood he had bought from Atlanta, which Mr. Glenn has testified he did buy.

Q. Making in all, as you remember, about how many ties?

814 A. For himself and his customers—that is one customer who particularly distributes his goods, as near as I could find out, he had about 400,000 bundles, which was an ample supply of ties to go with all of his bagging for the whole season.

Q. Now, in addition to that, did you sell as the representative of Carnegie, ties to the American Manufacturing Company, to go with their bagging?

A. Well, I did not, no, but as the American Manufacturing Company, I bought from the Carnegie 500,000 bundles for the American Manufacturing Company, to go with their bagging.

Q. So that amount of ties was taken from the Carnegie Steel Company for that year, in those two transactions?

A. In those two transactions there was 700,000 bundles withdrawn from their stock.

Q. Do you know the firm of Young & Metzner?

A. Yes, sir.

Q. What is their business?

A. They deal in second-hand sugar bags. Many of those bags they sell as bags where we come in competition with them. That

is, the American Manufacturing Company does. They have split up a lot of those bags and make sugar bag cloth of them, which is used for covering cotton bales to quite a considerable extent, but just how much extent, I don't know.

Q. Now, did you have any dealings with Young & Metz-
814½ ner for the purpose of furnishing them ties to cover the sugar bags?

A. Had two kinds of dealings with them. In the first place, in 1916, I called up Young & Metzner and asked them if they wanted any ties. They said certainly they did. Well, I said, "Now, I don't think you do, but I will give you an option until to-morrow on such ties as you want, and you telegraph and find out, because I believe that everybody who wants any ties has been supplied," and I think that letter of Young & Metzner tells the results. Their answer is that they communicated with their buyers; that they hadn't heard from them and we are correct in our statement that ties offered would not be taken.

Q. So that during those years, you so tried to dispose of the tie market as to give the various manufacturers a quantity of ties sufficient to cover the output of bagging that they had?

A. We endeavored to avoid an absolutely crazy market which was impending, by refusing to sell people who did not have bagging, and by selling ties to those people who purchased bagging, so that they might send the stuff along with the bagging to the consumer.

Q. And in dealing with Ludlow and with Young & Metzner, who else was there in the bagging business, who manufactured or dealt in bagging who might have any demand for ties?

815 A. Shall I finish with Young & Metzner first?

Q. Well, go ahead.

A. In 1917, we sold Young & Metzner 45,000 bundles of ties for distribution with their sugar bag cloth, and they so distributed them. Of that 45,000 bundles, I was informed that 35,000 bundles went to M. M. Graves & Company, of Houston, we refusing to sell Graves, and referring him to the people from whom he had gotten his sugar bag cloth, and then letting the sugar bag cloth people have all ties they needed, to go with all of the other bags, so they might distribute the ties, not only to this particular man Graves, who was there, understand, but to their other buyers. We did not know just where their stuff had gone; consequently we supplied them with all of the ties that they wanted to go with their sugar bags.

Q. Having supplied the Ludlow people and Young & Metzner people and the sugar bag people, who was there left who might demand ties to cover their bagging?

A. The best and largest other concern that I know of is the Riverside Mills, of Augusta, Georgia. They have not to my knowledge ever asked us for ties. They get enough second-hand ties to go with their bagging. They deal in second-hand ties. I am not
816 quite sure—large manufacturers and responsible and reliable

people. They do not handle ties, to my knowledge, and then there is a man named Johnson at Rock Hill, South Carolina; the name of his concern I forget. He does not, so far as I know, handle ties, although he sells rewoven bagging in that territory. There are two concerns at Charlotte, North Carolina.

Q. Are there any, I mean, in new bagging?

A. I am talking about these people who make rewoven bagging. There is no new bagging.

Q. So the only other people outside of Young & Metzner and the Ludlow and American who had to be supplied with ties were the people who make the rewoven bagging?

A. There are some other sugar bag men, smaller people, to whom we offered ties, which they did not buy.

Q. And outside of them, then, there was only the rewoven bagging people?

A. Only the rewoven bagging people and such people as deal in putting up old bagging and old ties who sometimes buy new ties.

Q. Now, when the year 1914 came along, what did you find with regard to the conditions as to the demand for ties?

A. The cotton crop was very large. The demand for ties was very great, but the ties had been mostly provided before the
817 war came on, and while there was a scarcity late in the season, we got through all right.

Q. Now, for 1915?

A. In 1915 the demand for munition steel was so tremendous that the cotton tie mills could hardly get raw material, yet there was but little trouble in 1915, and we got through all right.

Q. What effect did the scarcity of steel, caused by the war, have upon the persons who were dealing in ties, both the manufacturers of bagging and dealers who were speculating in them, and those who, serving to their regular customers, who did you ascertain as to the effect?

A. In 1916 it was difficult to obtain raw material from which to make ties. The steel market had begun a great advance; nails and wire had advanced very largely, and there was a disposition among the speculative merchants in the South, to buy cotton ties, in order to get the advance prices.

Q. Did the prices advance by reason of that?

A. The prices advanced prior to the Carnegie Company's price being made, as much as a dollar a bundle above their price.

Q. During that time, were various merchants in the South
818 sending out scare-head letters which were brought to your attention?

A. A good many such things were sent out, chiefly by M. M. Graves, of Houston, and several sets of brokers, representing the Carolina Bagging Company, of Henderson, North Carolina.

Q. I will show you several of such letters and ask you if they were handed to you during that time [handing papers to witness].

A. These things were sent in to Warren, Jones & Gratz as market

information, by different customers. Sometimes we would get as many as 20 or 30 copies of one circular.

Q. I will read from this rather than put it into evidence. It is from M. M. Graves, Houston, Texas, dated April 18, 1917, and reads in part:

"Government demands for steel must be given preference. The British Government is commandeering stocks of jute in England and India, and our Government may do likewise with raw material in manufacturers' hands."

Here is another:

"While stocks in Houston and Galveston are covered by insurance, yet that can only restore the money value of the goods and replacing the actual stock, under present war conditions, might be next to impossible."

819 Here is another:

"Demand for steel has been phenomenal, most of the production of the steel mills being sold up a year ahead at record-breaking prices."

Another one—this is dated April 6, 1917:

"Owing to the congestion at the tie mills, threatened serious strikes, and delays in shipment, coupled with the enormous advance in raw bagging materials, we find many of our customers prefer to buy at this time. Looks as if ties are to be scarce and deliveries subject to delays." Then he quotes prices.

Here is one on June 26, 1916:

"We look for a great scarcity of bagging, and especially ties, during the height of the active season.

"Looks to us as if the safer plan would be for you to take shipment at the earliest possible date. Aside from threatened strikes there is a probability that shipments of bagging and ties from the North may be seriously delayed by the Government demanding that both steamship and rail lines give preference to quick movement of War Department supplies to the Texas border." Prices are included.

820 On July 15, 1916:

"We look for a great scarcity of bagging, and especially ties, during the height of the active season, and ties without bagging to match are already commanding a premium of about ten cents per bundle." Prices attached.

Those are specimens of a lot of letters, which are submitted, which flooded the South——

A. From many sources; more from Graves than the others.

Mr. ROBERTS. I object to "such as are submitted."

A. Suppose you submit the book, Mr. Magner.

Mr. ROBERTS. I object to that.

The EXAMINER. Submit the letters without reading.

Mr. ROBERTS. I am willing to have him turn them over to the stenographer and mark the portions he wants to offer and Mr. Williams can get them, but I do not suppose you want to offer them all.

The WITNESS. There are several from the Carolina Bagging Company.

Mr. ROBERTS. You can turn to those at your leisure and mark them and give them to Mr. Williams. I know the purpose of them.

By Mr. MAGNER:

Q. What was the effect, Mr. Gratz, of the war conditions,
821 the prices of steel and the circularizing of these facts on the people in the South who dealt in cotton ties and cotton bagging?

A. When people found that the prices of nails and wire had doubled or more and got that kind of circulars they became excited and wanted to buy ties to put them away, so that they would have them when they wanted to make money—some of them. Their experience in previous years—we knew from experience that ties in North Carolina were absolutely unavailable for the Texas crop. Ties in Oklahoma would not cover cotton in Mississippi. If one territory overbought, it meant that there would not be enough to cover some other territry. So, to avoid the tremendous speculative demand, we limited the sales of ties as much as we could.

Q. Before I come to that, Mr. Gratz, what was the effect on the price of ties that were then in the market?

A. Mr. Graves testified he made a dollar a bundle profit on 40,000 bundles that he sold.

Q. That was true generally throughout the South?

A. Yes; where those inflammatory circulars went.

Q. As a matter of fact, the prices quoted by you usually fall below the market prices, do they not?

822 A. Yes, sir; to illustrate, in Georgia ties are selling 50 and 60 cents a bundle more than our prices were, or more than they are likely to be.

Q. Caused by these——

A. By this speculative handling.

Q. On account of the uncertainty——

A. Uncertainty of the supply and the chance to make money.

Q. Did that uncertainty likewise affect the manufacturing of bagging, or had ties been supplied to them in sufficient volume to cover their bagging—for instance, the Ludlow people?

A. The Ludlow people, having had those ties supplied to them to take care of their bagging through October and maybe November, hoarded those ties for use in mixed car bagging in the Southwest, where ties are necessary to the hauling of the bagging, and their customers and our customers testified and told us—many of them—that the Ludlow people, although selling bagging, refused to sell ties.

Q. Although you had supplied them with ties?

A. All the ties they needed for the early demand.

Q. For the bagging they had?

A. I should explain, Mr. Magner, if you ask the question, as to the difference in the custom in the different territories,
823 forced by the railroad tariffs, in the handling of bagging and ties, and if you want me to go into that now——

Q. I will bring that matter out in time——

A. I can not explain about the bagging and ties unless I explain about the mixed cars.

Q. Go ahead, then.

A. In all the territory east of the Mississippi River the railroad tariffs are so arranged that bagging and ties can be shipped separately without any grave penalty for quantity. A man could buy 50 bundles of ties or 5,000 bundles of ties, and get them at the same rate of freight. In the territory west of the Mississippi River, in a general way, the railroad companies charge much higher rates for less than carload quantities, but they will take a small carload of bagging and ties together—enough to cover one thousand bales of cotton—at the carload rate, for a low rate. If a man had to buy covering for five hundred bales of cotton, the freight would be double or three times as much as for one thousand bales. Most ginners only want to buy to cover one thousand bales. Consequently, the custom in that territory is to sell cotton bagging and ties in mixed cars.

Q. What do you mean by that?

A. So much ties, so much bagging, to go into each car. A
824 man might take enough to cover a thousand bales or fifteen hundred bales. If he was a large buyer, he might take enough to cover twenty-five hundred bales, but the universal custom is to sell bagging and ties in that territory, in mixed cars, because the trade requirements are that way, and it is not possible to distribute bagging and ties one without the other. A man must have both in practically the whole territory west of the Mississippi River. That has brought the custom among the oil mills and dealers and merchants of selling bagging and ties by a pattern, and you will see many quotations in those circulars of patterns. That means six yards of bagging and six ties. The Ludlow people and ourselves do not sell that way. We sell ties by the bundle and bagging by the yard. But the people we sell to re-sell by the pattern, and Warren, Jones & Gratz must have ties to go with the bagging, and bagging to go with the ties. I am assuming in this talk, so far, that the trade in that territory of the American Manufacturing Company is shipped in the name of Warren, Jones & Gratz, which it is. The Ludlow people must have ties to go with the bagging in that territory. Young & Metzner have to have ties to go with their sugar bagging cloth, and we supplied both of those firms in 1917, and we offered to supply Young & Metzner in 1916—we did supply
825 the Ludlow Company in 1916 and supplied the Ludlow people in each case before we supplied anybody else.

Q. What effect did these circulars and agitation have upon the market with regard to demanding more ties?

A. Very many people who had never handled bagging or ties wanted to buy ties—people who had not bought their bagging wanted ties. The price of ties before the market began in 191$_m$ had gotten to

a point where it was $1.00 a bundle above the price ultimately established.

Q. Do you recall the price that Graves & Company got for their ties in 1916?

A. Their testimony there states that they made a dollar a bundle profit. They quote their ties and bagging together by pattern, and you have to dig the thing out in order to find out what they got for each.

Q. Now, the prices having gone so high, and the great demand being made for it, did you find that the Ludlow people, for instance, to whom you sold these ties, were not furnishing their custom in the East with ties?

A. We found, on and east of the Mississippi River, beginning with Norfolk and going to Greenville and Natchez, the Ludlow people refused to sell any ties to anybody, as far as we can learn. We
826 know, in many cases, where the people came to us and asked for ties and told us that.

Q. The customers of the Ludlow people?

A. Yes, sir.

Q. Did you, out of the supply that the American Manufacturing Company had purchased from the Carnegie people for those years, furnish ties to the Ludlow Company's customers in the East?

A. The American Manufacturing Company bought 500,000 bundles, intending to use them in the southwestern trade, where most of its business is. The Carnegie ties were all sold within a week or two of the beginning of the market—so far sold ahead that it was not safe to sell further. There was a sale and demand from people who had legitimate use for the ties, and the American Manufacturing Company gave back to Warren, Jones & Gratz a very considerable share of its ties they had bought, so that they could be sold to the customers of the Ludlow Company—and some were sold to the Carolina Bagging Company through Mr. Cooper and to everybody who wanted ties. Telegrams were sent broadcast offering ties to anybody who would buy them more than a month before there was really any need of them.

Q. Recognizing during those years that there would be the necessity for the covering of the cotton crop from a national and a patri-
827 otic standpoint, and also knowing the necessity for having ties to go with the bagging of the American Manufacturing Company for the purpose of steadying the market, what did you do with regard to the situation generally—before I start that, however, the Carnegie Company, which you represent, made about one-half of the new ties?

A. They manufacture about one-half of the new ties. The exact percentage I do not know.

Q. The American concern manufactures about forty per cent of the new bagging?

A. Yes, sir.

Q. So that puts you in a position——

A. Forty per cent of the new bagging—forty per cent of all bagging sold, new and rewoven.

Q. New and rewoven bagging?

A. Yes; everything that goes into the rolls and is not actually secondhand material, without working over.

Q. Forty per cent of that?

A. Yes, sir; possibly forty-five.

Q. That placed you in a position of dominance, in a sense, in regard to the bagging and tie market. What did you do, having that position, for the purpose of steadying the market and keeping down the prices to the consumers?

828 A. In the first place I went to the president of the Carnegie Steel Company each year and told him it was necessary, for the safety of the country, to have on hand, ready for delivery, 1,000,000 bundles of ties each year. They came very near doing that much each year. Then we distributed those ties wherever we thought they would be needed, as well as we could. We sold the Ludlow Company, so that they should have ties to go with their bagging; we offered ties to people whom we knew had bagging or would distribute ties with bagging. We carefully avoided selling any man whom we did not know would distribute those ties promptly. I have a letter here from the Ludolw people, a clause of which I might read, showing their general disposition.

Q. You might read that.

A. This letter is dated June 29, 1916, and reads:

"Things are working more smoothly now, but the supply of ties is still very scant.

"Messrs. Warren, Jones & Gratz are having to take back from the American Company the ties they have sold so as to be able to give them to other people.

"Please be sure that your ties are freely offered with your goods, because we have not enough ties to steady the market unless all
829 of the people who have bought from us offer their purchases for sale quite promptly."

Q. State what else you did. What did you do with reference to the Carnegie people—insisting on their making more ties?

A. I insisted in the beginning that they have that million bundles ready. Then I insisted that they prepare themselves to furnish us 100,000 bundles a month, so long as the demand lasted. I have not here my report to them as to the conditions and requirements from time to time during that season. I think, myself, that those letters——

Q. Just state the substance of the conversation you had with Mr. Farrell and Mr. Jenks and Mr. Dixie—these men at the head of the Carnegie Company?

A. I explained unless they wanted all the banks in the South to be broken they must supply ties.

Q. Explain what you meant.

A. That the cotton crop must be moved and that it could not be moved without ties, and I even went so far as to say to the president of the Carnegie Company one year that they had better make all the ties they could and throw those not needed into the ocean rather than run short; that the whole prosperity of the United States depended on the movement of the cotton crop, which could only be moved unless they made the ties necessary to cover the
830 crop. I had representations made to the Connors-Weyman Steel Company——

Q. Was that made to Mr. Farrell or to Mr. Dixie?

A. To Mr. Dinkey and afterwards to Mr. Homer Williams, the president—you know there has been a change in the Carnegie Company. From time to time I saw Mr. Farrell, but I did not take time to talk that way to him, because he was very busy.

Q. These representations were constantly made each year?

A. For many years.

Q. And especially since the war situation?

A. Since then the situation was more difficult, and the tendency to speculation was very much greater, and we had to exercise more care and had to call on them to do expensive and difficult things in furnishing ties to satisfy a sudden and unexpected demand.

Q. Did you have any talk with them in regard to prices?

A. In advance of making prices, I always consulted them. The price as made is their price. In 1916 I urged them very strongly to make a higher price than they had intended to make, because after talking with the other people who were then making ties, I found they would not make them, or could not make them, for the price the Carnegie people had contemplated putting into effect, and
831 by my representations they were induced to make a somewhat higher price, although it was a price somewhat below the comparative price of hoops.

Q. In other words, the Carnegie people can manufacture somewhat more cheaply than the Birmingham & Atlantic Steel Company?

A. I do not know that, but I believe so.

Q. Your belief was what caused you to urge that?

A. No; my belief that these people could do better with the hoops than make ties at the price contemplated by the Carnegie Company. The policy of the steel corporation is to sell goods at a fairly good price and never take a premium on anything. If they have the goods they will sell at that price, and if they have not they will not sell at all. My orders have been to sell the usual quantity to the usual customers at the established prices and never ask anything extra, and we followed those instructions as well as we could.

Q. After these conversations that you had with the president of the Carnegie Company and other officers, did they agree to do that and subsequently make ties in accordance with that demand?

A. They made ties so we were able to, with a good deal of manœuvring and squirming, get through without the market being cor-

nered, but it took very great effort and care not to let
832 the ties go where they would not do the most good.

Q. There were no ties cornered during those years?

A. Since 1912 there has never been a time when the Carnegie Company did not furnish us with enough ties to hold the market steady at their price. The United States Senate called on the Department of Commerce to investigate the bagging and tie business in 1913, and a copy of that report I should like to file as a part of my evidence.

Q. That is it, is it not [exhibiting to witness]?

A. Yes; it stated the condition of the business with fair accuracy up to that time, which was filed in 1913. There are some immaterial inaccuracies, such as they say that we and the Ludlow people—Ludlow people and ourselves—control the price of bagging. We do not; but when we begin to sell, of course other people have to adjust their prices to our prices. They could not get any more.

Q. And that same thing happens with ties?

A. Yes, sir.

Q. The price fixed by the Carnegie Company being lower, they have to come down?

A. Yes, sir.

Q. And in every instance in 1914, 1915, 1916, and 1917 the
833 Carnegie people's prices at the opening of the market have been less than the prices obtaining previous to that time?

A. Certainly in 1916 and 1917. I do not know whether there was any speculation in 1915 or 1916.

Q. It has never been above the market price?

A. Never above, and usually below.

Q. You knew, from your conversations with the officials of the steel corporation, in making those ties and marketing them at the prices they did, that they were marketing them at a relative loss as compared with hoops?

A. Yes; from what knowledge I had of other steel goods. I do not keep posted now as to the cost of making ties. I do not know what they are now.

Q. Do you know how the price of ties has advanced from 1913, as compared with hoops?

A. I have not the market prices of either ties or hoops in my mind back as far as 1913; but I know in 1916 ties sold for very much less than the price of hoops, and that the two concerns making ties made less ties than they made before, because they could get more money for hoops. They sold hoops at times for very much higher prices. Since about 1914 one large manufacturer has not
834 made any ties. Another concern failed, and has failed to furnish ties, and the proportion of ties that those people failed to furnish has had to be taken up by the Carnegie Company at grave loss and inconvenience; otherwise, the crop could not be covered.

Q. It has been testified by Mr. Simmons that the relative increase of hoops and ties was, for ties, 33⅓ per cent, and for hoops 300 per cent. Do you know whether that is correct?

A. There has been an increase in that neighborhood, but ties have increased more than 33⅓ per cent now. They increased from 1916 to 1917 from $1.30 to $2.05 per bundle, basis Pittsburg. That would be an increase of about 40 per cent, I believe.

Q. Yes; 40 per cent.

A. And in that same time other steel goods, before the Government established the price, went up, some of them, four, five, or six hundred per cent, but the kinds of steel that the Southern people knew about, being wire nails, had advanced several times as much as ties had advanced, and it made them feel disposed to speculate in ties.

Q. The proportionate advance of bagging to other jute goods, such as burlap, was about the same?

A. Bagging advanced from, roughly, 8 cents to, roughly,
835 11½ cents. That was from the end of the first year of the war up to now. Burlap was offered at 3½ cents a yard and within a week we have sold it at 16½. There is no reason why burlap should have advanced in any greater percentage than bagging. Bagging, however, has advanced a total of not over 50 per cent, while other jute goods have advanced 500 or 600 per cent.

Q. What effect had the selling of bagging and ties together upon keeping a steady market in regard to prices?

A. The investment in bagging, assuming bagging to be worth 10 cents a yard, because that is easy to calculate—would mean 60 cents a bale. Take ties at $1.20 a bundle, would be 24 cents a bale. It takes about two and a half times as much money to pay for the bagging as it does for the ties. The policy of the American Manufacturing Company in holding a moderate bagging market being pretty well known, people did not feel as disposed to speculate in bagging as in ties. Their prospect of profit was not as much and the investment amounted to two or three times as much. They were not as anxious to speculate in bagging, although there was some tendency to speculate in bagging.

Q. Did the bulk have anything to do with this?

A. You can store maybe 15 bundles of ties where you can
836 one roll of bagging, and it costs less to hold ties, for that reason. The way we have managed the thing and tried to do, was to sell ties to people whose interest was much greater in the distribution of the goods than in the profits made on them. In a very large portion of the country bagging and ties are now distributed by cotton oil mills for the purpose of getting the seeds. They do not try to get a profit out of the bagging and ties other than barely covering the cost of doing the business. So, when you send those goods to them, you are pretty sure that the question of distribution with them was very much more important than the getting of profit, and you can rely on their selling those goods to people who need

them. We can sell cheaper that way. So, there would be no holding back of material sold to people like that. In a general way we were successful. The Ludlow people did hold back and made trouble, but they were the only large concern.

Q. And in that way you prevent speculation in ties?

A. Yes, sir.

Q. And you gave them to people who required them, at the lowest possible rate?

A. Yes; gave the product, which was useless without the other, to the men who were to use them, at the lowest possible price.

837 Q. Irrespective of that, and in addition to that, during any of those years; that is, the years 1915, 1916, and 1917, was anyone refused ties?

A. There were people refused ties—many of them—for various reasons. There are a lot of people who are unpleasant and who do not carry out their contracts.

Q. I mean irrespective of that—people who needed ties?

A. There has not been anybody in many years, who desired ties and needed them, who could not get them long before he needed them.

Q. That was true in 1915, 1916, and 1917?

A. Yes, sir.

Q. Any person who applied to Warren, Jones & Gratz got ties during those years—we will give the exceptions later——

A. I will have to give the exceptions, because we did not sell to everybody.

Q. Explain to whom.

A. I need not mention names—excepting in the beginning of 1916 and again in 1917, when we began to sell, the other makers of ties did not begin and so we refused at first to sell in that territory.

Q. I mean ultimately?

838 A. Ultimately everybody got ties who was clean enough to put their names on our books—months before they needed them.

Q. In 1916 did you actually sell more ties than the Carnegie people manufactured?

A. I have a list here showing that there was never a time, until about the end of the cotton tie season, when we were not sold ahead.

Q. It has been testified, Mr. Gratz, by the Carnegie witness—I can give his name later—that in 1916, the Carnegie people made 991,556 bundles of ties. How many bundles of ties did you contract to sell that year?

A. Up to the 31st of July we contracted to sell 1,363,000 bundles. We put ourselves in great jeopardy by making these contracts, relying on the future manufacture.

Q. That is, when that demand was made to you to sell, you sold irrespective of the fact whether you had them or not, for the purpose of preventing a runaway market?

A. Yes; and to hold the control and to give people the ties cheaply, relying on Mr. Jenks to make them under conditions of pressure, if it had to be done.

Q. And during that year a large number of these sales you
839 made were canceled afterwards, because the parties found afterwards they did not want them?

A. The crop was short, and a lot of stuff was canceled on our hands.

Q. So they made demands on you which you supplied, but which they did not need?

A. If we had not sold those futures the prices of ties would have been five or maybe ten dollars a bundle. I have seen those things happen.

Q. You took a chance in selling these ties; in order to keep the price of the market down?

A. Yes, sir.

Q. And you incurred a personal liability by so doing?

A. Yes; the same thing happened in 1917.

Q. Were you or were you not oversold all the time from the date the market opened?

A. Not from the date the market opened, but from a week or ten days from the opening of the market.

Q. A reasonable time after the opening of the market?

A. Not only was the Carnegie Company oversold, but we took back from the American Manufacturing Company ties that they needed to go with their bagging, to give to people who were
840 selling them with the rewoven stuff. We sold to Mr. Cooper a great deal.

Q. Mr. Gratz, Mr. Gholson, of the Carolina Bagging Company, has stated that they had a supply of bagging left over because they did not have the ties to go with it.

A. I show you an advertisement which they published of their plant, et cetera, in which they advertise themselves as manufacturers of Arrow ties—manufacturer's agents for the new Arrow ties.

Q. Do they hold themselves out as the agents for the manufucturer of those ties?

A. They and other brokers advertise themselves as manufacturer's agents for the new Arrow ties.

Q. I show you a circular from Lyle & Lyle, one of whom was a witness in these proceedings—Mr. Gholson has testified he was one of their agents, with Bridewell—and I ask if that is one of their circulars?

Mr. ROBERTS. I do not think this would be admissible, inasmuch as no member of that firm has been on the stand.

The WITNESS. This is a copy and not the circular itself (exhibiting).

Mr. MAGNER. Mr. Gholson testified to that effect.

841 Mr. ROBERTS. He was testifying about Lyle & Lyle.

Mr. MAGNER. Gholson testified Lyle & Lyle were the agents.

Mr. ROBERTS. But I do not yet understand the connection.

Mr. MAGNER. If you will bear with me, I will tell you, Mr. Roberts.

Mr. ROBERTS. Very well, go ahead.

Mr. MAGNER. Mr. Lyle is the secretary and sales manager of the Carolina Bagging Company. He testified to that in this record.

Mr. ROBERTS. The objection is withdrawn.

Mr. MAGNER. He also testified that Lyle & Lyle was their agent. I offer in evidence this circular, and also their printed circular wherein they refer to themselves as the agents of the Carolina Bagging Company, manufacturing bagging and ties, Henderson, North Carolina.

Mr. ROBERTS. I do not understand under what idea those would be admissible, as what the Carolina Bagging Company did or Lyle & Lyle did—if it was a violation of the law for one to do it
842 of course it was a violation of the law for the other to do it, but the one does not justify the other.

Mr. MAGNER. Not at all; it is not offered for that purpose.

Mr. ROBERTS. They are not parties to this suit, and have nothing to do with this case and I do not understand that what they did would be relevant to this issue.

Mr. MAGNER. Only this; that the agent and secretary of this company testified that they could not get ties to cover their bagging, because of the fact that Warren, Jones & Gratz and the Carnegie people would not sell ties without bagging, and that was the reason they could not get the ties. Now, we have also shown here to-day, that they were selling ties at the time he testified this was a fact, and he held his bagging over. We want to put these in evidence, that this man who claimed he could not sell bagging because he didn't have the ties, was selling bagging under the same conditions as he was complaining of.

Mr. ROBERTS. I do not think because he made the abstruct statement that Lyle & Lyle acted as agents for them, that at that particular date he was selling ties. That does not appear there.
843 Mr. MAGNER. He advertises himself at that time as the agent of the manufacturer of ties.

The EXAMINER. Note Mr. Roberts' objection on the record.

Mr. ROBERTS. We will straighten that out later.

The EXAMINER. I will not decide it, no matter how much you gentlemen may argue.

Mr. MAGNER. I do not know whether that is complimentary to either of us.

Mr. ROBERTS. I suppose he means that the court will not decide it now, but will decide it later.

The EXAMINER. I want to discourage argument a little bit.

Mr. MAGNER. I also offer in evidence a circular by Bridewell to the same effect.

(The circular letters referred to were thereupon received in evidence.)

By Mr. MAGNER:

Q. There were some people who testified that Warren, Jones & Gratz had refused to sell them ties. Did you have commercial reasons for refusing some of these people credit?

Mr. THOM. Will you please read that question?

844 (The stenographer thereupon repeated the question.)

A. I will have to answer in a larger way, Mr. Magner. We do have commercial reasons for refusing to deal with some people.

Q. Do you know the witness Korndorf—did you ever have any dealings with him?

A. We did with Rumble & Wendell, with whom he was connected—disagreeable people.

Q. They were Ludlow's customers?

A. Ludlow's bagging customers.

Q. Did you ever have any dealings with Lowenburg, of Natchez?

A. I. Lowenburg & Company. We think he stole 2,000 bundles of ties from us. We shipped the ties to them, but never got the money. His bank failed and we never got the money. I have instructed our agents not to sell him.

Q. And Mr. McMillan——

A. His testimony is sufficient. He is not a desirable customer.

Q. He failed in his obligations with you?

A. He did, and he has testified there in the record as to what he did. He wrote us a letter saying that it was not necessary to sue him, or words to that effect, that our claim would be

845 good against him for ten years. We waited for about nine years and had to go to court then. He stated that that letter was written on legal advice to us, and he plead the statute of limitations, and we could not get judgment. We have sold to him from time to time because we had the only supply of goods and did not want to freeze him out of the business. We have pursued that policy with everybody, when we were sure we would get the money; that we would supply them with goods when the supply was scarce.

Q. Was that the case with the Carolina Bagging people?

A. The Carolina Bagging people's methods do not please us, and we have never solicited their business, although we have sold them many ties in the names of other people at Wilmington, because we would get a good name on the contract. We sold the Carolina Bagging Company a carload of cotton tie buckles and had a great amount of unpleasantness over it. Many other things have occurred that did not make it pleasant to do business with them. Their circulars circulated by their agents contain a great many untruths.

Q. Margolus testified nobody would give him quotations.

A. I do not blame people for not quoting him.

Q. You prefer not to sell him?

846 A. We prefer not. Sometimes, when goods were scarce, we would sell him, but always with a string on it.

Q. Early, Foster & Company——

A. They once bought goods from us and got us to cancel the contract because it was inconvenient for them to fulfill it, but we had a large jobber in that town, and we make it a rule not to sell a broker where we have a jobber in the same town. That is a universal rule with us.

Q. Platter—did you have any dealings with him?

A. He represented the Boren-Stewart (?) people of Dallas. They are good people and have bought pretty much of their goods in our line from us.

Q. They sold to Graves?

A. My understanding was they sold to Graves and wanted us to duplicate the order with them, which we did not do.

Q. Graves speculated on them?

A. Yes, sir; and made a dollar a bundle.

Q. You afterwards sold them?

A. Yes, sir; I think we sold them the following season. It would help things to have me state the way in which we managed that business in 1916.

847 Q. Go right ahead. There is one question I wanted to ask before you do that. In the complaint, the first cause of action, in paragraph 3, you are charged with the purpose and intent of stifling competition in interstate commerce in the sale of bagging, et cetera, in that you refused to sell ties unless the prospective purchaser would also buy bagging from you in a proportionate amount. Did you at any time, for the purpose of procuring business for yourselves, or with the intention of producing a monopoly or with the idea of hurting anybody, adopt such a rule?

A. We did not, and the truth is to the contrary.

Q. Your purpose was contrary?

A. To protect the purchaser of goods from runaway markets. We have spent our own money and injured our own business in trying to protect the consumer.

Q. In those ways?

A. Yes, sir.

Q. In the second complaint, paragraph 3, you are charged with a violation of section 3 of the Clayton Act, in that you sold and made contracts for selling and are now selling, and have fixed and are now fixing, prices charged for bagging and ties in the United States, and

848 are offering a discount from that price, or a rebate on the condition or agreement or understanding that the purchased shall not deal or use the goods of your competitors, and that the effect of such sales contracts, under the conditions of that agreement or understanding, was to substantially lessen competition and tended to create a monopoly.

A. There is not a word of truth in that, nor has there ever been.

Q. Did you get any rebate from any sales of this kind?

A. They state that we gave them.
Q. Well, did you give any?
A. No, sir; we never asked them not to buy other people's goods.
Q. Have you, on the contrary, asked them to take your customers and supply them, in order to hold the market?
A. Yes, sir.
Q. Now, you can make that explanation.
A. We will not have time before lunch.
The EXAMINER. Go ahead and make your statement.
A. In 1916, knowing that the prospect was early for a large cotton crop, and that the supply of ties was reduced by reason of the bankruptcy of one mill, the cutting off of ties of another and a
849 lessened quantity of ties produced by the rest, because they could not get the raw material, or could sell their goods more profitably in other ways, we adopted every kind of device to lessen our sales of ties. Early knowing that there was a large supply of secondhand material in the southeastern part of the United States that could be used for making ties and covering cotton; knowing that there were two cotton tie mills in that territory which could supply a large share of the ties needed, Warren, Jones & Gratz in the beginning refused to sell any ties in the eastern territory. The mills in Atlanta and Birmingham were slow to begin selling; the Ludlow people refused to sell its customers, and within a week or two it was shown to our satisfaction that Norfolk, at least, could not get ties advantageously from Atlanta. So we supplied the Norfolk demand from those people whose contracts we were willing to take. Soon thereafter the other three mills began to sell ties, and the immediate danger of a corner was, to some extent, lessened. The Carnegie Company did not have any ties they could sell and deliver, and, knowing the urgent necessity of having more ties, I represented to the officials of the American Manufacturing Company that it would be advantageous if they would let us sell their stock of spot ties, bought to go in their mixed cars in the
850 Southwest, all over the country. This, according to my recollection, was about the middle of July. Upon receiving consent from the American Manufacturing Company, Warren, Jones & Gratz immediately telegraphed everybody that we had any reason to believe would buy ties, whose contract was acceptable, offering them ties without any kind of limitation whatever. Under this offer many of the American Manufacturing Company's ties were sold, some to the Carolina Bagging Company through Wilmington, North Carolina; some, it seems, to the Dixie Bagging Company, through John S. Jenkins & Company, and we also sold and induced the other cotton tie mills to sell to C. H. Hutchinson, of Jonesboro, North Carolina, a considerable quantity of ties, Mr. Hutchinson being the largest putter-up of secondhand bagging, and in that way a competitor of the American Manufacturing Company.
The sale of these ties by the American Manufacturing Company deadied the market so that the Carnegie Company's established

price was carried through the season. Without the efforts of Warren, Jones & Gratz and the American Manufacturing Company there is no telling how high ties might have gone.

According to my recollection, of the 500,000 bundles of ties bought by the American Manufacturing Company, not one-half was
851 sold with their bagging, their competitors getting the benefit of a large share of it.

Q. Was there any advance in the price of it?

A. The American Manufacturing Company sold their ties, when sold at retail, at 1, 2, and 3 cents a bundle profit—sometimes 4 cents. Ties that were sold by Warren, Jones & Gratz to the general trade, largely competitors of the American Manufacturing Company, were sold without profit to either concern—even 1 cent a bundle. At the end of the season the ties the American Manufacturing Company had left were turned back to the Carnegie Company, although still the market was enormously higher, and there would have been a manufacturer's profit in keeping them. This was done because the Carnegie Company had been assured that those ties would be distributed in such a way as to give them to the trade on the cheapest basis, and that the American Manufacturing Company would not make any speculative profit out of the ties.

Mr. Magner, I wrote several letters to the Federal Trade Commission in the beginning of this matter, all of which I am prepared to swear to, if you wish to produce them in evidence. They knew of these things before.

Mr. MAGNER. I offer in evidence the letters from Mr. Gratz
852 to the Federal Trade Commission previously to the filing of the complaint.

Mr. ROBERTS. I object to those letters, because I can not in any view of the case see where they would be legal testimony.

The EXAMINER. Note the objection on the record.

Mr. ROBERTS. What Mr. Gratz contended was the fact about this matter in a letter to the Federal Trade Commission I fail to see would be material here.

The EXAMINER. Note the objection.

(The letters referred to were thereupon received in evidence.)

Mr. MAGNER. I offer in evidence also parts, to be selected from the report of this Commission—this letter from the Secretary of Commerce, transmitted in response to the Senate resolution of July 13, 1918, being an investigation as to the advanced price of cotton bagging and the price of ties used in the handling of cotton.

Mr. ROBERTS. We object to that.

The EXAMINER. Note the objection.

By Mr. MAGNER:

Q. What is Mr. Elmer's relationship to Warren, Jones & Gratz?

853 A. Mr. Elmer is a broker in New Orleans, with a guarantee of about so much a year from the American Manufactur-

ing Company. He sells their goods chiefly in the name of Warren, Jones & Gratz, under specific instructions as to what he can do. He neither buys goods nor sells goods, nor bills goods, nor collects the money. His business is practically that of a clerk. He does not do anything but reports offers, which we then accept or decline. He has no discretion at all. He is not a merchant in business and cannot do anything about bagging and ties unless specifically directed, and then he does not bill for the goods nor collect the money.

Q. How many yards of bagging go with a bundle of ties in the baling of cotton?

A. In the gin they usually put on six yards of bagging and six ties. Say there are 30 ties in a bundle, a bundle of ties should bind five bales of cotton. At the compress there is some bagging added, which is called patches or labels. The compress also uses two more ties, which they usually piece up from the ends of old ties, although they sometimes buy short bands with which to hold the bales.

Q. A bale of cotton is sold gross—so much a pound?

A. In this country, yes, by the gross weight.

354 Q. So that the bagging and ties are sold at the price of the cotton?

A. Yes, sir.

Q. The price of cotton is now how much?

A. 36 cents a pound, according to the morning paper.

Mr. ROBERTS. I submit that has been proven already by witnesses and has not been controverted.

The EXAMINER. That was brought out.

Mr. MAGNER. Then I shall not pursue it further.

By Mr. MAGNER:

Q. How long after the opening of the market for ties, in 1916, was it that Warren, Jones & Gratz offered ties without bagging?

A. They offered ties without bagging to all comers along during the month of July, some sixty days before they were needed.

The EXAMINER. We will take a recess at this point until half past one.

(Whereupon, at 12.40 o'clock p. m. recess was taken until 1.30 o'clock p. m. of the same day.)

355 AFTER RECESS.

ANDERSON GRATZ resumed the stand and testified further as follows:

Direct examination (continued):

The WITNESS. I was making a statement when I finished, about 1916. I might go on and finish about 1917.

Mr. MAGNER. Well, go ahead, then.

The WITNESS. I went over the thing for 1916 as well as I could. In 1917, the scarcity of ties was, if anything, a little worse than it was in 1916. I instructed our St. Louis office that they were not to sell ties to people who did not either buy or have bagging; that they were to know every time they made a sale whether the man had bagging to go with his ties. That their own offices or agencies, like Williams, weren't to make these sales to people who already had bagging, but refer the matter to them.

Judge ROBERTS. It strikes me in that connection, if the court please, that the letters would be the best evidence of just what those instructions were. His memory might not be accurate about it.

The WITNESS. Unfortunately, letters are not always written.

856 I go back and forth between St. Louis and New York, but the list of sales made would come pretty nearly covering that case.

Mr. MAGNER. I do not think that the letter would be the best evidence either, if he can testify to the facts. In fact, he could only use the letter to refresh his mind, is the rule of evidence.

EXAMINER MCCORKLE. Well, proceed.

The WITNESS. I have here a list of the cotton ties sold up to May 31, 1917. I can not pick out from this list all of the people who were sold bagging without ties—ties without bagging, but I have here D. L. Gore Company, of Wilmington, a thousand bundles; Geyer & Company, Greenville, Miss., 10,000 bundles; The Greenwood Grocery Company, Greenwood, Miss., 8,000 bundles; John F. Jenks Company, Norfolk, 5,000 bundles; Ludlow Manufacturing Associates, 151,900 bundles; Mente & Company, New Orleans, 22,000 bundles; H. & C. Newman, New Orleans, 5,000 bundles; J. W. Perry Company, Norfolk, 10,000 bundles; and a lot more. I don't know each one, all of whom were sold ties, prior to May 31st, without any bagging.

Judge ROBERTS. Let me see that list. That was in 1917, was it?

857 The WITNESS. In 1917, you see, Williams had a letter that he entered on the record, showing that we instructed him not to sell ties without bagging, we reserving ourselves the selling of ties to people who had bagging. That is the reason I am bringing out this list and showing how that thing was managed, so that we might keep control of the tie stock, and not let it get away from us. You can look at this list. All of those pencil marks are people we sold ties to in 1916, without bagging. I can not swear to them, but Mr. Brown will, if necessary.

By Mr. MAGNER:

Q. Whose customers, if anybody's, were these people for bagging?

A. Everybody's.

Q. Weren't they all Ludlow's that you have just—

A. Not by any means.

Mr. BIGGS. The Geyer Company.

The WITNESS. The Geyer Company was Ludlow's.

By Mr. MAGNER:

Q. How many of them were Ludlow's, will you tell us if you can?

A. Mr. Brown can tell you better when he comes. Now,
858 in 1916, from the week after the market opened, until after the middle of September, the Carnegie Company did not own any ties they could sell. In 1917, from the time the market opened, or a week after the market opened, they had not caught up with their orders. The contracts we had made on the 31st of August—they had not caught up with those contracts. I have no memorandum beyond that.

Examiner MCCORKLE. Were they introduced this morning?

The WITNESS. They were introduced.

Examiner MCCORKLE. Well, they will be filed.

The WITNESS. Now, with reference to the selling of bagging without the ties, one of the witnesses said a good deal about that. The American Manufacturing Company has a bagging mill in Charleston, S. C. Our records show that in 1915, they sold 6,000,000 yards of bagging, with a million and one-half ties, 50,000 bundles. In 1916, they sold 3,550,000 yards of bagging, and used in its sale 1,900,000 ties.

In 1917, the year that he carried over his bagging, because he could not sell ties with it, they sold 4,140,000 yards of bagging and 400,000 ties, 13,484 bundles. There has never been any diffi-
859 culty in that territory in selling bagging, without the ties because the people use second-hand ties to an extent, with the present high price of ties, of at least one half of their consumption.

By Mr. MAGNER:

Q. In addition to that, you have also furnished them with ties?

A. In addition to which we sold great quantities of ties in the territory, and the mill in Atlanta sold ties.

Q. Now, Mr. Gratz, I show you a contract with Warren, Jones & Gratz, with Rumble & Wendle. Who are they?

A. They are the——

Q. They are the principals of Korndorffer, who was a witness?

A. Who was a witness.

Q. Mr. Korndorffer has testified that he was forced to buy bagging by Mr. Williams, in 1916, with ties. I show you this contract between Warren, Jones & Gratz and this gentleman. Did not Warren, Jones & Gratz sell him during that same time, as is shown by that contract, 2,000 bundles of ties?

A. Warren, Jones & Gratz sold him on June 30, 1916, 2,000 bundles of ties.

860 Q. Without any bagging?

A. Without any bagging.

Q. No solicitation as to bagging at the time?

A. That was a very grave rupture of principle, because they don't like to sell it. He is a disagreeable animal.

Q. I think you have testified, Mr. Gratz, that in 1916, the ties that were offered with bagging were mainly, if not exclusively, American Manufacturing Company's ties?

A. I can explain that contract a little more fully, if it is no clear.

Q. I wish you would.

A. In the territory west of the Mississippi River it is absolutely necessary to have ties to go with bagging, because you can not otherwise ship the bagging. Everybody who sells bagging in that territory has ties. I got the Carnegie Company to sell the Carolina Bagging Company 25,000 bundles last year, at the opening of the market, so that they might have ties to go with their bagging, which they shipped on consignment to Little Rock and Houston, Texas. That was sold. The agreement to sell it to them was made before the market opened, and if it was any satisfaction to them to know it, I wrote the letters.

Q. That is not what I wanted.

861 A. I am not going on to tell that. It is necessary in that territory to have ties to go with the bagging. Now, when the market had just opened, Mr. Jenks and Mr. Clyde, the manager—Jenks the manager and Clyde the sales agent, were in Philadelphia. I told them that the American Manufacturing Company should have some ties to go with their bagging in view of the fact that the Ludlow Company had a full supply, and I bought from them 500,000 bundles for the American Manufacturing Company, the intention being to sell those ties with the American Manufacturing Company bagging. The American Manufacturing Company's agencies for selling bagging that worked for them exclusively on the kind of bagging they make were the Norfolk Bagging Company of Norfolk, the Charleston Bagging Company, which is a trade name, a concern they own; W. P. Sparks in Georgia, and P. P. Williams & Company of Vicksburg.

The American Manufacturing Company paid for those ties and consigned a stock to Williams, and in 1916 the Carolina Company nor Warren, Jones & Gratz did not sell to or through Williams a single tie. The ties he had, all of them, were American Manufacturing Company ties, bought by them and paid for with their

862 money, to be used along with their bagging, yet when their people could not get their ties the American Manufacturing Company consented to Williams selling a great lot of those ties without their bagging. It was the same way with the Norfolk Bagging Company and the same way with W. P. Sparks. I am not as familiar with the Charleston, but I think the same thing was done there to some extent, although they don't do much business in ties, but the American Manufacturing Company's ties then, later being

the only ties there were, were offered broadcast to all buyers whoever would make an acceptable contract, and in the case of the Carolina Bagging Company whose contract was not acceptable, they were sold to them through Stone & Company of Wilmington so that they might have ties, this being in 1916.

Q. Was there any profit to the American in the transaction?

A Not a thing. The American got their ties to help out the situation.

Q. Will you explain to the court just the relationship between Warren, Jones & Gratz and the American, so that we will get plainly the reason for that?

A. My brother is treasurer of the American Manufacturing
863 Company and I am the vice president, that has the most to say in the business of the American Manufacturing Company. They make rope, twine, and bagging. The bagging is the smallest item in our business.

Q. Is it not necessary to go into that extensively.

A. They make about 45 per cent of the bagging that is sold in rolls as new bagging, leaving out sugar bags, second-hand bagging, and bagging bought from the cotton mills. In the country west of the State of Alabama, the firm of Warren, Jones & Gratz has been doing business now 43 years. They are the best known commercial house in all that territory, I think. They have had the good fortune always to be able to fill their contracts, even when there were strikes in the mills. They have always given everybody the stuff they promised, about when they promised it, and have done business, as they saw it, fairly and squarely, so that the preference of the firm name in that territory as against any corporation, is very great; so the American Manufacturing Company, having tried selling bagging in their own name throughout that territory, for some years, induced Warren, Jones & Gratz to allow their name to be used in making sales of all bagging that is marketed west of the State line of Alabama. Warren, Jones & Gratz have no interest in those
864 sales. A separate set of books is run for them, kept by an employee of the American Manufacturing Company. All of the expenses are paid by the American Manufacturing Company, and the sales are at the risk of the American Manufacturing Company. The business is as clearly distinctive, except that Warren, Jones & Gratz are the agents for the American Company in name, and agents for the Carnegie Company, as if the American Company's goods had nothing to do with Warren, Jones & Gratz at all. In this case, where they bought these ties, they were marketed over the bagging books and sold by Warren, Jones & Gratz, as agents for the American Manufacturing Company, except only the Williams ties, whose accounts also came into Warren, Jones & Gratz's books. I don't think Williams knows to this day that he works for the American Manufacturing Company, and not for Warren, Jones & Gratz—that is Fitz-Hugh. I never told him, but

there is no mixing of interests or responsibilities in any way whatever. So that when these ties were offered in 1916 along with bagging, they were the American Manufacturing Company's ties, paid for with their money, to be used for the purpose of supplying their customers, so that the people could have ties to go with bagging, which otherwise they might not have been able to
865 have. Warren, Jones & Gratz, as agents for the Carnegie Company selling ties, as long as the Carnegie Company had any, or as long as it was safe to put out a contract for future delivery to anybody who made an acceptable contract, which is another way for saying anybody who is respectable enough to sell.

Mr. MAGNER: Now you can cross-examine, Mr. Roberts.

Cross-examination by Judge ROBERTS:

Q. Mr. Gratz, in order that we may understand clearly your relation to these different concerns, I will go over that matter just a little bit again. Now, as I understand it, Warren, Jones & Gratz were the general selling agents of the Carnegie Steel Company?

A. For cotton ties only.

Q. That is what I mean, for this product.

A. Yes.

Q. You have exclusive handling of their output of ties?

A. We do not. There is no limitation on how many of those ties the Carnegie Steel Company may sell, and they do sell ties. For two seasons they have been careful not to sell many ties, because the supply was so scant that they did not dare risk making sales, and possibly making a corner, or as explained by Mr. Jenks, being compelled to turn mills off of other very important work.

866 Q. Don't you know as a matter of fact, that it was brought out in the investigation at Pittsburg, that your firm sold something like 98 per cent of the entire output?

A. We do, because we get 98 per cent of a preference. That is what we are paid for.

Q. Now, then, it just lacks that much, about 2 per cent, of being exclusive sellers?

A. No, it has nothing to do with exclusive; because the Carnegie Company might sell 98 per cent any time they can find the buyers, without any violation of contract.

Q. Do you mean they are not obligated to let you sell them all, but as a matter of fact you do sell practically all they make?

A. As a matter of fact, we do get the preference on a very large per cent of the amount, and I am proud of it.

Q. Of course, that is a fine business. I understand that. I am not claiming that you are doing anything wrong in handling those ties, but trying to bring out your relation to these different things. Now, you are vice president of the American Manufacturing Company?

A. Yes.

Q. And your brother——

867 A. Is treasurer.

Q. And you and your brother are both members of the firm of Warren, Jones & Gratz?

A. We are of the firm of Warren, Jones & Gratz.

Q. And you control the policy entirely of the Warren, Jones & Gratz firm—you and your brother?

A. Certainly we do, because we are the whole firm.

Q. Well, you also control the policy of the American Manufacturing Co.?

A. We do not.

Q. Well, you handle its entire product?

A. We do not.

Q. Who does, then?

A. The American Manufacturing Co. sells about 80 per cent of its product direct.

Q. Well, who manages that business? Don't you manage it?

A. No, I am one of the managers, but there is a board of seven directors, of whom I am one, and my brother is one, and the others are high-grade business men who have as much interest in the business as we have, and who do the running of it.

Q. Is it not a fact, Mr. Gratz, that you are the active manager of the business?

868 A. No, it is not. That—there is another active manager, and has been for several years and I simply overlook him.

Q. You are the head of the concern?

A. No, the president is a man who has been president of the largest trust company of the West, and who gives his whole time to this business, Mr. John D. Filley, of St. Louis.

Q. You overlook the man who is the active manager?

A. I am one of the people who overlooks the man who is the active manager, quite right.

Q. Then, if there was to be any differences in the company about the policy, as between the active manager and yourself, what you thought about it would control?

A. Unless Mr. J. D. Filley, on reference to him, agreed with the other fellow. Then it would go. We have him there for that purpose.

Q. Where is Mr. Filley?

A. He is at White Sulphur Springs, at the moment.

Q. Where does he actively hold forth in the business?

A. About one-third of the time here, and the other two-thirds in the St. Louis office. All important questions from time to time are referred to Mr. Filley.

869 Q. Well, now, is not this true, Mr. Gratz, that as a matter of fact, in the selling and distribution of bagging and the ties, that you are the controlling spirit and direct the business in a general way? And what you say goes; is that the fact?

A. In a general way, in the selling of bagging and ties, what I say goes. You are correct.

Q. Now, you spoke a while ago about selling quite a number of people. If you will give me that list now—you checked certain names there. Is not this a fact, Mr. Gratz, that these people whom you testified to selling ties without bagging that, as a general rule, they were men who handled the bagging of the American Manufacturing Company?

A. It is not true as a general rule. They did not.

Q. Well, are these men who were not checked—did they handle your bagging?

A. They are men who are supposed to handle our bagging.

Mr. MAGNER. Mr. Roberts, I will say we are going to put Mr. Brown on next, and he will testify as to every one of those.

The WITNESS. Mr. Brown knows those details.

By Judge ROBERTS:

870 Q. I did not want to encumber the record with any unnecessary thing. I want to ask you now about Rumble & Wensel. You testified here from the list that on June 30, 1916, you sold Rumble & Wensel 2,000 bundles of ties, without any bagging?

A. Yes.

Q. Previous to that time they had bought 100,000 yards of bagging from your Messrs. P. P. Williams & Company in Vicksburg, had they not?

A. I believe so.

Q. And 5,000 bundles of ties?

A. I hope not.

Q. You so testified.

A. We had not ought to have given them but three.

Q. Mr. Williams so testified, and so that they had already purchased from you 100,000 yards of bagging previous to this sale?

A. Yes.

Q. And how many bundles of ties should have gone with that 100,000 yards of bagging?

A. In that territory they use 7 yards of bagging to the bale, because the law requires that bales go on steamboats fully covered on the sides, so that that 100,000 yards of bagging would cover
871 about 14,000 bales of cotton, and you divide 14,000 by 5 you will find that it took a little less than 3,000 bundles of ties to go with that 100,000 yards of bagging, leaving 4,000 bundles of ties that they could use with other bagging.

Q. Now, in that memorandum that you showed me there, I believe it was contended by Mr. Korndorffer that he had to carry over 40,000 yards of that bagging for the reason that he already had on hand a sufficient amount of bagging when he bought the 5,000 bundles of ties. That was his contention, was it not?

A. I think it was; but the reason was that the crop was short and he did not sell what he thought he would.

Q. Well, you say that was the reason, Mr. Gratz. How do you know that was the reason?

A. Because I know the crop was short, very short.

Q. But you do not know that Mr. Korndorffer did not tell the truth when he said that he already had on hand as much bagging as he needed, do you?

A. Mr. Fitz-Hugh's testimony contradicts Mr. Korndorffer, and, not having been in that trade, I am not able to testify much about it. Mr. Fitz-Hugh testified that he offered to take that bagging back, and Korndorffer would not give it up.

872 Q. Did not Korndorffer tell Mr. Fitz-Hugh that he was not willing to let him have it back at the price he paid for it, as bagging had advanced very greatly in price at the time he offered to give it back?

A. It had not advanced very greatly.

Q. Did not Korndorffer say that that was the reason he would not?

A. He may have said so. The whole transaction, as related by Mr. Fitz-Hugh, differs so greatly from Korndoffer that I can not pretend to keep track of how they settled their differences. One or the other of them has not told the truth, and I am not prepared to swear which it is.

Q. You are not prepared to say that it is not true that Rumble & Wensel had to carry over 40,000 yards?

A. I am not. I think they did. I think it would have been quite surprising if they had not, in view of the shortness of the crop in their neighborhood.

Q. At the time that you sold this 2,000 bundles of ties, without any bagging, on June 30th, to Rumble & Wensel, it had already been known—it was already known, in the year 1916 I am talking about, that the cotton crop was going to be short at that time, was it not?

873 A. No, sir; it was not. I have the date here from these letters, which I will show you, that on the first day of August I wrote to the Carnegie Steel Company telling them that it was now shown that the crop was late and might be short.

Q. Well, I take your word for that, Mr. Gratz.

A. On the 30th of June the Government had not yet announced the cotton-crop acreage. They do it the first week in July. It is kind of hard to tell how a cotton crop is going to be before we know how much the acreage is.

Q. But you found out on June 30, 1916, that there was not going to be any shortage in cotton ties?

A. I did not. I found out there was a great shortage and was dividing out the ties as closely as we could to make it so the people could get through.

Q. You remember coming down to the Federal Trade Commission's office in Washington and talking with me some time about this case, don't you, Mr. Gratz?

A. Yes, sir. What was the name of that young man I did talk to?

Q. Mr. N. Q. McDonald and myself?

A. McDonald—I have been forgetting his name.

Q. You and Mr. McDonald, you remember, came into my
874 room and talked with me some time about this matter, did you not?

A. Yes, sir.

Q. And is not this true, Mr. Gratz, that you took these men out, one at a time, and gave the reason why you had not supplied them with ties in the year 1916?

Mr. MAGNER. Took which men out?

Q. These parties who have testified that they could not buy ties.

A. Who are the people?

Q. Well, I will begin with Rumble & Wensel. Did you not say in that conversation that Rumble & Wensel some years before that had been favored by you with a barge load of ties, and that you never heard any more from them. They quit patronizing you, and for that reason you did not care to deal with them; that they had not had any more business dealings with you, and you just did not care to deal with them?

A. I will read you a memorandum I wrote——

Q. Just answer. Did you not say that to me; that they were not satisfactory people to deal with; that you had supplied them
875 with a whole barge load of ties and been very kind to them, and they dropped you and traded with other people?

A. I don't recollect saying it, but I will say it now—that we did not care to do business with them.

Q. That was the reason why you did not sell them?

A. The reason why we did not solicit their business; not why we did not sell them, because we did sell them when we found there was no place to get ties for them. We sell very many people, disagreeable people, when we have the only stock, and have never failed to do so.

Q. Then, did you not take up another man, C. Lee McMillan, at New Orleans, and explain at great length about him having defrauded a firm that you were connected with some twenty years ago?

A. I have testified to-day about C. Lee McMillan, as to exactly what he did do, and you will find it in the record already, and I probably explained to you that if we did not want to do business with McMillan when we could avoid it. That is true.

Q. And you said for that reason that you did not sell him?
876 A. I instructed Mr. Elmer not to solicit his business at all.

Q. Did you not several times refuse to fill McMillan's orders, notwithstanding Mr. Elmer wrote on the bottom of the bill that he guaranteed the payment of this bill?

A. It is not a question of the guaranteeing of the payment. Mr. McMillan is a professional reclaimer. He always does something that makes the trade unsatisfactory. He bought packing from us, delivered New Orleans; got us to ship it from St. Louis; got possession of the bills of lading, and had it reconsigned by the railroads, and got it at a cut price, the whole freight from New Orleans down,

upsetting our relations with our other customers. He has been unsatisfactory always after the goods were sold, and even supposing that we got the money, and we are too old and too well off to do business with people who are not satisfactory people to trade with.

Q. Well, you gave that as a reason why?

A. That is the reason why we would not sell McMillan.

Q. You had sold him, though, a great many bills from the time that you lost that money on him?

A. Yes.

Q. Up to that time, up to 1916, you had sold him a great many bills?

877 A. It is my recollection that in March, 1916, I told Mr. Elmer that we would not do business with McMillan any further. There was something fresh and unsatisfactory came up. Mr. McMillan circulated the whole country with scurrilous circulars about us. He has done everything sort of thing that he could for our injury, and then came and whined that we were crowding him out of business. We have put up from more from him than we did with anybody else, because he used to be a friend of my brother's. I finally said that if my brother wanted to trade with him, he could go on and trade, but I would not do business with McMillan or allow his name to appear on the American Manufacturing Company's books.

Q. In this conversation down in Washington you discussed Margolis down at Norfolk, the man that you say does business under three names?

A. There are other Margolises. The Margolises I am after is Margolis Brothers, also the Southern Bagging Company, also the one who signs for the Atlantic Jute Mills (Inc.). Margolis's record as a business man is such that we don't want to do business with him. We have sold them when they could not get goods elsewhere or when they claimed they could not, but we don't care to do business
878 with Margolis, either to buy or to sell stuff to them. I tried buying stuff for a time, and the goods were not satisfactory. It is just simply that there are some people that don't do clean business, and we won't bother with them.

Q. You gave as the reason in this conversation, did you not, Mr. Gratz, that the reason you discarded Margolis and did not want his account was because some acquaintance or some friend of yours had once sold him a lot of jute butts and the price advanced after he sold them, and Margolis—something like that, or for some reason—Margolis broke his contract and did not abide by his word?

A. I did not say it that way, but I will go into the whole thing if you want it now.

Q. You need not go into the whole thing; just give the reason?

A. Margolis made contracts with a good many people, one year, for old, second-hand bagging throughout New England; put the market up to about two or two and a quarter cents a pound. We had to compete with Margolis to get stuff that we wanted to run on.

I bought 9,000,000 pounds at 2 1/8 cents. July came, and the market broke. Margolis repudiated all of those contracts. I have
879 had the men seen since, and there were a good many of them. That broke the market down until when we finally took our stock we paid the market of 65 or 67 cents, and we lost $130,000 or $140,000 by reason of his welching and having put the market up on us, and Margolis is a welcher and we won't trade with him.

Q. Then you went into Lowenberg, and you said that Lowenberg——

A. All of these things I have told today.

Q. You lost some money on Lowenberg?

A. Not on Lowenberg, but to Lowenberg; that is right. We think we lost this dishonestly.

Q. Well, I want you to state, Mr. Gratz, when it was in the year 1916 that you refused to sell ties to Bowen, Stuart & Company of Dallas, Texas, whom you testified this morning were good, honest people. Why was it you would not sell them?

A. Because they had 6,000 bundles of ties and the American Manufacturing Company's bagging, and they sold those 6,000 bundles of ties to Graves, a speculator, and left themselves without, and then called on us to make good that lot of stuff, and at first we would not do it. Later on, I guess we did, but we can find that out from Mr. Brown.

880 Q. You supplied more to it, did you not, after you found out there was no shortage of ties?

A. No, sir; we did not find out there wasn't any shortage of ties until late in the fall. We did not refuse to sell anybody in the summer at all, because we found there wasn't a shortage. We took the American Manufacturing Company's ties and sold them for one half that we could have gotten for them, in order to keep the market level.

Q. Why was it you would not sell W. F. Bridewell & Company at Little Rock?

A. They are brokers for the Carolina Bagging Company. They misrepresent the business they do, but the reason we would not consider a sale to them was that they were brokers in a market in which we have two large jobbers, and we won't put a broker in competition with our own customer who buys his goods. I can mention, Mr. Roberts, we will not sell any broker in any market where we have a customer who buys goods.

Q. What relation does the firm of P. P. Williams & Company of Vicksburg bear to your concern, Warren, Jones & Gratz and
881 the American Manufacturing Company? Do they buy the goods outright, or do they handle them on commission, or how do they do it?

A. P. P. William & Company formerly bought their goods outright; a good many years ago. Of recent years they have not. The relationship is a litle complex, in that the goods that are sold by P. P. William & Company, the cotton ties, other than in 1916—be-

ginning with 1914, may be before, Warren, Jones & Gratz had paid the American Manufacturing Company a commission on the goods that Williams sold, and the American Manufacturing Company itself has compensated Williams.

Q. You stated in this conversation with me that I referred to a while ago, did you not, Mr. Gratz, that we ought to strike P. P. Williams & Company and C. O. Elmer from this suit, for the reason that you are ready and offered to bear the entire responsibility for what they did?

A. Glad to bear the entire responsibility, because I am very proud indeed of everything we did.

Q. That they acted under your direction, and that you were responsible for them?

882 A. So far as Elmer went, except that he solicited trade from Rumble & Wensel and Lowenberg that I would not allow if I had known it. Elmer did exactly what we told him in selling goods, and, understand, he didn't sell any goods, because we billed them. He simply acted as a collector, and Williams, so far as I have been able to get at the record, also did what he was told, but understand Williams, in 1916, had no relation with Warren, Jones & Gratz at all.

Q. But he did with the American Manufacturing Company?

A. He did with the American Manufacturing Company, and sold their goods, which they shipped to him on consignment.

Q. And the ties which the American Manufacturing Company had bought from Warren, Jones & Gratz.

A. No, sir; had bought from the Carnegie Steel Company.

Q. Through Warren, Jones & Gratz?

A. From the Carnegie Steel Company direct.

Q. So that you, as I understand it, are solely responsible for what P. P. William & Company do in the handling of these goods, either as the manager of the American Manufacturing Company,

883 or as a member of the firm of Warren, Jones & Gratz?

A. No; I am not responsible for what P. P. Williams & Company do, because P. P. Williams & Company have been buyers and sellers of other bagging and ties. So far as the goods belonging to the American Manufacturing Company is concerned, why, I have given instructions to Williams, or have authorized instructions to be given to Williams, straight through.

Q. And in the year 1916 you wrote Mr. Fitz Hugh, of P. P. Williams & Company, several letters outlining the policy that you wanted him to pursue in relation to the distribution of bagging and ties; is that not true?

A. I don't think so. It is possible that they were sent from the St. Louis office, but if so, I have not seen them.

Q. Those letters, I will state for your information, Mr. Williams submitted them at St. Louis at the hearing, that in a manner indicated what your views were about the shortage of ties, and how you wanted the business transacted, so that I take it that Mr.

Williams—Messrs. Williams & Company and C. O. Elmer acted under your instructions in reference to the handling of this
884 American bagging and these Carnegie ties—acted generally under your instructions?

A. There were no Carnegie ties with Williams in 1916; they were American Manufacturing Company ties.

Q. But they had been manufactured by Carnegie?

A. By Carnegie.

Q. And bought by the American Manufacturing Company from Carnegie, and placed with Williams to sell?

A. With Williams to sell, on commission.

Q. Williams did not buy them outright?

A. No.

Q. He was handling both the bagging and ties as agent of the American Manufacturing Company?

A. He was, exactly; but I don't see what the American Manufacturing Company has got to do with this proceeding.

Q. Mr. Gratz, did you say anything to me, or to Mr. McDonald, in that conversation to the effect that you refused to sell these parties because you considered them speculators, or was it because that you considered them men that were not desirable people to deal with?

885 A. I may have said so, but I can tell you now that we don't like the color of their eyes.

Q. I think you said something about the color of their eyes. Well, I will ask you this: Did you refuse to sell these parties that I have just been asking you about because you did not consider them agreeable people to deal with—satisfactory people to deal with or because you considered them speculators, intending to speculate in the ties, or because you did not like the color of their eyes?

A. We did not sell them because we thought they were undesirable customers.

Q. And you did not refuse to sell because you expected them to speculate in the ties?

A. No; not those people.

Q. Who was it you did refuse to sell because you thought——

Mr. MAGNER. "Those people." There are a lot of people here.

Q. I started to ask you this question: It has been brought out here that your purpose in handling and directing the ties in the year 1916, was largely to keep them out of the hands of speculators. Now, who was it that you refused to sell in the year of 1916
886 on the ground that they were speculators?

A. A great many people who were not legitimate handlers of ties. We have constant inquiries from people whose names I don't remember, not legitimate dealers, and from people who want to buy many more than they could ordinarily sell. Also, I will mention Mr. Graves as a speculator, in particular, but, Mr. Roberts, we had many inquiries—I can not say hundreds, but dozens—from people who wanted to buy ties purely for speculative purposes. We refused

to sell them. Now let me explain why. Primarily, we wanted to keep ties out of the hands of speculators because we were working for the Carnegie Steel Company and wanted to follow out their instructions as to maintaining a level market for their goods.

Q. Did they say they wanted to buy those ties for speculative purposes, or do you just conclude that that was what they wanted?

A. We so concluded from our knowledge of the trade.

Q. Prior to 1916, Mr. Gratz, did not—had not your firm always been willing and anxious—reasonably anxious to sell all of
887 the ties and all of the bagging which you could?

A. No.

Q. To good people?

A. No.

Q. Why was that?

A. We have refused to sell speculators always, because they demoralize the market during periods when there is not an active demand. A distributor we are glad to sell. An operator we don't care to sell, if you distinguish the meaning between the two words.

Q. Well, I have some sort of an idea about what you mean by that, but if a speculator in a town or city gets hold of a lot of ties and hopes to squeeze the trade with them, and you have a good, steady man there that handles your goods, why is it that you cannot take care of him?

A. Because the good, steady man will have to lose money in competition with the other fellow, who presently gets demoralized and throws the stuff overboard without regard to value.

Q. I thought the speculators always wanted to make a big profit?

888 A. They do, but they lose money before they are through. They withdraw the stuff when it is needed, and then when the active demand is over they want to get out and they throw it on the market, and break it all to pieces. Mr. Roberts, there are two demands for bagging and ties. One begins at July and goes through August, and we call it the first demand. There is some ties and some bagging for everybody. There is a second demand, when they have used that stuff up. It usually begins about the middle of October. Now, from the first week in September until the first or second week in October there is a period during which bagging and ties can not be sold at all. People don't want them. They have got some and they don't want any more, and we have had people break down the price of bagging one cent a yard for 50,000 yards, by trying to sell it between.

Q. Here is a point about this whole business that I don't understand, and I would like for you to explain. If there is any profit to you in making a sale of bagging and in handling ties for the Carnegie Steel Company, why is it that you are not willing to sell all of them that you can sell, provided you get all orders from reliable people?

889 A. There is no profit to Warren, Jones & Gratz in selling bagging.

Q. Well, there is profit to the American Manufacturing Company!

A. To the American Manufacturing Company, all right, but Warren, Jones & Gratz are not willing to do unsatisfactory business for profit.

Q. Well, if you sell your goods to good people and get the money for them?

A. That is not satisfactory, unless they can sell those goods and make a profit on them.

Q. Don't you make a profit?

A. Not unless they can sell them and make a profit.

Mr. MAGNER. Explain that to Mr. Roberts.

The WITNESS. When we sell a man a lot of stuff and he has not an actual outlet for it, it does not occur in his business that he naturally has customers to sell it to, and he goes around to try and find buyers. Well, he don't get the preference, so he then begins to cut the price and to demoralize all of the rest of our customers. and if we sell brokers who don't carry stock, or if we sell specu-

890 lators, our regular customers don't want to deal with us. It is a business we have been with since we were little boys, I guess, and we don't so much care to make a little money this year as to supply the business for next year, and the way it works out to our satisfaction is the way we have done it, and we have kept on that way. It had been a development. We used to sell speculators, but it proved unsatisfactory, and we have drawn the line against them for a lifetime almost. I don't think in twenty years we willing sold a speculator. We occasionally discontinue selling a concern that thinks it has a trade. I will give you a sample of one, which is a very wealthy house that has bought bagging and ties from us several times, and it is always—has always been satisfactory. That is Mente & Company, of New Orleans. They have no natural trade for the stuff, and they can't understand why they cannot sell it and make money. People don't give them the preference, and what we have sold them has never appeared satisfactory to them or to us, so we gradually quit selling them.

891 Q. I want you to tell me now, Mr. Gratz, how it is that a man who has on hand a supply of Ludlow's bagging that it has any tendency to eliminate speculators if you refuse to sell him ties without he buying the American bagging, like Korndorffer said you did?

A. He did not say that about us. He said that about Williams.

Q. Well, Williams acting for you. Now, how does that to any extent——

A. He was not acting for us.

Q. How does that eliminate speculators?

A. I say he was not acting for us.

Q. Can you see any difference?

A. Wait a moment. Williams was not acting for us.

Q. He was acting a while ago, you said, for the American Manufacturing Company?

A. Exactly so, which has nothing to do with this case. The American Manufacturing Company owns its ties, bought them to sell along with their bagging as well as other bagging manufacturers. It is an entirely legitimate business. He was not acting for
892 Warren, Jones & Gratz, nor did he act for them at all in 1916. I have explained that several times.

Q. I understand you say you draw a distinction between Warren, Jones & Gratz on the one hand and the American Manufacturing Company on the other hand, and Williams was dealing in and handling the goods of both concerns?

A. Warren, Jones & Gratz had no interest with Williams, nor did he do one dollar's worth of business for them in the year 1916, and there was just as much difference as there was between you and Mr. Thom as to the business done.

Q. Warren, Jones & Gratz sell Carnegie ties to the American Manufacturing Company?

A. They did not.

Q. You said it was done through them?

A. No, sir; I said I bought the ties from Mr. Clyde, the general sales agent of the American Manufacturing Company, for the American Manufacturing Company.

Q. We will have it now this way. The Carnegie Steel Company, through Mr. Anderson Gratz——

A. No.

893 Q. Is not that your name?

A. That is my name, but they did not through me. They did through Mr. W. G. Clyde, their sales agent, sell the American Manufacturing Company.

Q. At the solicitation of Mr. Anderson Gratz?

A. Exactly so.

Q. The Carnegie Steel Company sold the American Manufacturing Company a lot of ties?

A. Yes.

Q. And they placed those ties?

A. Some of those ties.

Q. Some of those ties and some of their bagging in the hands of Mr. Williams?

A. Yes.

Q. P. P. Williams & Company of New Orleans?

A. No; call it Vicksburg.

Q. Vicksburg; and you directed Mr. Williams how to handle this stuff?

A. I did not; but my office did, so it comes to the same thing.

Q. And he refused to sell Mr. Korndorffer any ties without he would buy 100,000 yards of American Manufacturing Company bagging?

894 A. The American Manufacturing Company, owners of ties and manufacturers of bagging, refused to sell Rumble & Wensel ties without bagging that year, but sold them at that time a good many more ties than went with their bagging.

Q. Later on?

A. No, sir; right in that one sale sold Rumble & Wensel 2,200 bundles of ties that were not with bagging at that time.

Q. And Rumble & Wensel claiming at that time that they had on hand all of the bagging that they needed for that year?

A. Mr. Fitz Hugh swears differently. I don't know anything about that.

Mr. Biggs. Mr. Korndorffer does, to.

By Mr. Roberts:

Q. I want you to tell how a transaction like that, as stated by Mr. Korndorffer in his testimony, eliminates the speculator?

A. Go on over and tell me what Korndorffer stated; I don't know.

Q. Korndorffer stated that he already had on hand all of the bagging he needed.

895 Mr. Biggs. The record does not show that. That transaction with Korndorffer was made at the beginning of the season, and he testifies that subsequent to that time he bought an additional lot of bagging from the Ludlow Manufacturing Company. I don't think Mr. Roberts means to misquote the record. This was the first bagging he bought that year, and subsequently he bought his supply.

Examiner McCorkle. Let us refresh your memory.

Mr. Magner. Apart from that, Judge Roberts, the bagging of the American was not sold to prevent speculation, nor the ties. That was sold to help this man out; had nothing to do with speculation. That was ties that ought to have been sold with the American bagging. That had nothing to do with speculation.

By Judge Roberts:

Q. Here is Mr. Korndorffer's statement that Mr. Thom calls my attention to, from his testimony:

"Q. At that time, state whether or not you were already supplied with bagging? We were, sir. What kind of bagging did you
896 have on hand? Ludlow bagging manufactured in Boston. But did the Ludlow bagging compare with the American bagging?" That is not material, but it appears in this record that Mr. Korndorffer stated that he did not want to buy any bagging, and that you forced Williams & Company—forced him to buy 100,000 yards of bagging that he did not want in order to get 5,000 bundles of ties, and that he carried over 40,000 yards of it.

A. And made money on it.

Q. Well, I want you to explain now, Mr. Gratz, how that in any way eliminates speculation from the bagging and tie markets?

A. I don't think that has anything to do with this case whatever,

because it is a transaction between the American Manufacturing Company, Williams, their agent, and Rumble & Wensel, and Warren, Jones & Gratz has nothing to do with it.

Q. How long, Mr. Gratz, did you follow the plan of selling ties only to those dealers who also bought bagging from you, and you discontinued the practice? Please state why you did so.

897 A. What year is that?

Q. 1916.

A. So long as the Carnegie Company had ties for sale we sold them without reference to who had bagging or who had not. When there were no ties left, except those of the American Manufacturing Company, for a matter of two weeks they tried to sell their ties with their bagging, but ties becoming scarce, they then offered their ties to all comers at cost, and I understand that in one day we sent out 40 telegrams, unsolicited, quoting ties to anybody who wanted them.

Q. Did you think that those dealers that handled American bagging exclusively were less apt to speculate in ties than the dealers who handled other brands of bagging?

A. I do not know of any dealers who handled American bagging exclusively. They all buy something else, so far as I know.

Q. Do you know any one that you refused to sell ties to who handled American bagging?

A. Who we refused to?

Q. You or your agents? Do you, or Elmer, or P. P. Wil-

898 liams & Company? I mean do you know any customers of Warren, Jones & Gratz, or their agents, to whom you refused to sell ties?

A. Warren, Jones & Gratz or their agents never refused to sell ties so long as the Carnegie Company had them for sale.

Q. Do you know any firm that handled American bagging exclusively that you ever refused to sell?

A. I never knew of any firm to handle American bagging exclusively.

Q. Do you know of any large dealer in American bagging you refused to sell?

A. Yes.

Q. Who?

A. Bowman & Stuart, Graves. Graves is the largest dealer in American bagging.

Q. You stated a while ago why you refused to sell?

A. Speculated in both cases—speculated in the ties.

Q. Did Graves undertake to buy any ties from you after the market opened in 1916?

A. Yes; tried each year. In 1917 we sold Young & Metzner 45,000 bundles of ties to go with their sugar business. They

899 sold of those 35,000 bundles to Graves, because they had sold him the sugar bags, and we did not know all of the people to whom they had sold their sugar bags, so we supplied the bagging—the ties to the bagging, manufactured to go along with the

bagging that the manufacturer put out, doing that in the case of every bagging manufacturer that we knew wanted ties and whose contract we were willing to take.

Q. Did you not wire Graves or write him—didn't Warren, Jones & Gratz do so in 1916, that you could not sell him ties except with bagging?

A. The American Manufacturing Company's agents may have done so, but Warren, Jones & Gratz, owning ties or having Carnegie owning ties that were for sale, did not do so. Warren, Jones & Gratz never saw the time that they were not sellers of ties when the Carnegie Company had the ties on hand to sell.

Q. And did you not refuse to sell Bridewell & Bowen-Stuart both unless they also bought ties?

A. No, sir. Bridewell's concern—we would not trade with them at all. Whether we had any inquiry, I don't know, but we would never sell them bagging or ties at any price, under any conditions.

900 Q. You testified this morning that you and your brother owned about one-twentieth of the stock of the American Manufacturing Company?

A. Yes, sir.

Q. Does the Carnegie Steel Company own any of that stock?

A. It does not.

Q. Do any of the active men in the Carnegie Steel Company own any of it?

A. Not a share that I know of; never have.

Q. Where is the other owned? Where are the people that own the other shares besides what you and your brother own?

A. There are 1,500 stockholders, men I do not know who or where they are. About a thousand of them are in the State of Massachusetts. There are 110 in South Carolina. There are several hundred thousand dollars worth in Texas; there is some in Georgia, some in California, one stockholder in Australia, and a good many in St. Louis.

Judge ROBERT. I believe that is about all.

Mr. MAGNER. I will call Mr. Brown now.

901 CHARLES F. BROWN, called as a witness on behalf of the respondent, being duly sworn, testified as follows:

Direct examination by Mr. MAGNER:

Q. Where do you live, Mr. Brown?

A. Kirkwood, Mo.

Q. What is your business?

A. Well, I am with Warren, Jones & Gratz and the American Manufacturing Company. I sell goods.

Q. How long have you been with them?

A. Twenty-six years.

Q. Do you know the conditions of the trade in ties and bagging during the years 1914, 1915, 1916, and 1917?

A. Yes, sir.
Q. And previous thereto?
A. Yes.
Q. You make contracts, as I understand it, with purchasers for bagging and ties?
A. In some cases.
Q. What is the character of the contracts that you make, Mr. Brown?
A. It is just a contract where we sell them the goods, and they put up something, you know, but just sign the contract, and
902 that is what we do. We usually carry out our part of it, and the other fellow does, if it comes his way, and it looks all right to him, he does it.
Q. If it is profitable he does, and if it is not, he does not?
A. Yes.
Q. How frequently do you have cancellations of the contracts?
A. Every year.
Q. Many of them?
A. A good many.
Q. So that people are accustomed to buy ties and bagging, and make these contracts, and if they find there is profit, they carry them out, and if not, they don't?
A. Some of them. Very few that carry them out.
Q. Entirely?
A. Entirely; and we sometimes cancel for a consideration, and then if the fellow won't pay anything, we let him go for nothing.
Q. Speaking of the speculators in ties, Mr. Brown, are there many of these people who have been mentioned, and others dealing in these goods, who speculate in ties?
903 A. They would all speculate if they could. They would all either buy——
Q. And it has been the purpose in recent years to prevent that if you could, has it not?
A. Yes.
Q. State how you do it—how you handle that?
A. Well, if we sold a fellow about what we thought he would need—some of them have insisted upon having more, and take this example, for instance: We open a market up to sell goods, and a good many people want to buy more stuff than they need, than we thought they needed, and we talk them out of it, some of them, and some we do not. Some would like to have—that is, we sold them more goods than we thought they needed, and it was demonstrated afterwards that they bought more than they needed, and we made some enemies, really. That is, some of our best friends, who were best friends in the business, don't like us so well now, because we cancelled part of their contract when they asked us to sell them more goods, and they could not use them all—did not have use for them at the end of the season. We asked them to pay us something, and

they did not want to do it, and never have paid us anything
904 that I know of yet—don't think maybe they ever will, but they found they did not need so many goods—bagging and ties. Bagging and ties are both relatively cheaper than any other commodity in the country—things that are sold alongside—taking the steel proposition. Why, everything in the steel line was a good deal higher than ties. They thought that ties were a big bargain. They did not stop to think that ties were only used to bale cotton, and if they had too many and could not sell them they could not sell them for anything else, and would have to carry them over, and they in a good many cases often would cancel. The first of the season we had one of the biggest concerns in the country cancel a million yards of bagging and ties to match, and I think 500,000 yards of bagging was cancelled within two weeks after they bought it.

Q. Knowing that, do you discourage the purchase of more ties than is necessary to go with the corresponding amount of baggage?

A. No.

Q. Do you discourage the purchase of ties by customers of
905 the American and customers of Warren, Jones & Gratz, whom you regard as speculators—who are speculating in ties?

A. We discourage it with people who are our customers and other people's customers.

Q. Give us some of the samples of the American?

A. Well, you take M. M. Graves. I guess now he is the biggest customer we have. He is the biggest dealer in bagging and ties in the United States. He wanted to buy—when he bought his first purchase from us, he bought from Mr. Murray in Dallas. Mr. Murray was down to Dallas at the Cotton Seed Convention, and he bought a contract of bagging and ties—whatever it was—I think it was a million yards of bagging he bought then, and if he did it was 33,000 bundles of ties, and he wanted more ties than would go with the bagging. Mr. Murray told him he did not have the ties to sell him. We did not have any surplus ties at that time. Well, he called me up at St. Louis—Mr. Graves did—and asked me to sell them to him. I told him we could not sell them to him; that we had no surplus ties then to sell to anybody. We would
906 have to wait until we saw. I told him "You don't need any ties, Graves." He sayd, "Yes, I do." I says, "But you don't; you think you do, but you don't need them for your legitimate trade at all." He said then, Mr. Murray said if I would call up Mr. Glenn of the Steel Company, and Mr. Conners of Birmingham, may be I could get them to sell him 25,000 bundles of ties. I told him I was not running their business, but if he thought I could do him any good, I would call them up; and I called them both up and asked them to sell him 25,000 bundles of ties. They both said they didn't have any ties to go out of their own territory. They asked me why we did not sell them to him. I says, "We haven't got ties enough to go around, I don't think, and that fellow now has got plenty of ties, but he don't know it."

Q. Are there other places than Mr. Graves, that you refused ties?

A. Yes, sir.

Q. Tell us who they were?

A. Blair-Hughes & Company of Dallas and Wichita Falls; they never sold out.

Q. How many ties did they want that you refused?

907 A. Well, they wanted to buy fifteen of twenty thousand bundles more. We did not give them to them just at that time. They had not sold anything, practically at all. They were buying the stuff to sell. It wasn't two weeks until they found—they found they did not want as much as they had bought. Rotan Grocery Company, probably the biggest grocery company in Texas. They bought, and bought more than they needed—wired to get us to sell them more. We did not sell them. Then they cancelled a third of their purchase, and they still have a lot on their hands now that we are carrying for them that they did not sell.

Q. Any others that you recall?

A. Well, I believe the Paris Grocery Company of Paris, Texas. You can take pretty near all in Texas. You don't have to individualize on them, because pretty near everybody there bought a little more than they needed.

Q. And wanted to buy more?

A. Most all wanted to buy more, when the market opened.

Q. You discouraged every one?

A. We tried to as much as we could.

Q. Refused to sell in most instances as much as they wanted?

908 A. We never absolutely refused to sell. Told them to wait; didn't have any trouble about them later.

Q. Can you identify the American customers on that list [handing witness a paper]?

A. Yes, sir; well, you don't want them.

Q. Not the American, but that is a list where you furnished ties without bagging?

A. Yes; what is this?

Q. It is a list of people you furnished the ties to without bagging. Which of those are not American?

A. Well, the first one, Mr. John W. Brooks.

Q. He does not handle American bagging, does he?

A. No, he was a dummy; he didn't handle bagging or ties either. He bought these for the Carolina Bagging Company. Now, the next one on here is the Geyer Company. They are Ludlow's customers.

The next is John S. Jenkins. If the Greenwood Grocery Company is on there, they are Ludlow's customers. John S. Jenkins, bagging manufacturer. He buys bagging from Ludlow, but not from American. Ludlow Manufacturing Associates; they are manufacturers. They are not customers of American. John M. Parker,

New Orleans, is a Ludlow buyer; he buys a little stuff from
909 us, but gives his preference to Ludlow.

John W. Perry, Norfolk, is a Ludlow customer; don't buy bagging from the American.

Rumble & Wensel is a Ludlow customer; says that they are agents for the Ludlow.

The Stone Company, of Wilmington, is another concern that don't handle bagging and ties, but buy ties for the Carolina Bagging Company.

H. Weil, of Goldsboro, handle other people's bagging and buy some few ties from the American Manufacturing Company, or Warren, Jones & Gratz, this year, I guess. That is pretty near all I see on there.

The Greenwood Grocery Company, they are the same thing practically as the Geyer Company, and they are Ludlow's people; mighty nice people, but they don't handle our bagging.

Q. Now, Mr. Brown, do you know about this transaction with Elmer selling to McMillan, that was testified to, in 1917? Mr. Roberts asked Mr. Gratz about it, and Mr. Gratz did not know the circumstances about Mr. Elmer buying ties—McMillan through Elmer, buying ties?

A. Oh, no; there was nothing of that kind; you are
910 speaking may be about that barge load of ties that Rumble & Wensel bought.

Q. Now, Mr. Brown, did you in 1916 or 1917, have an interview with Mr. Conners, of Conners-Weyman & Company at the request of Mr. Gratz, in regard to ties?

A. Yes.

Q. State what that was?

A. Well, I asked him to make us more ties, if he would. It looked like ties might be scarce, and if it was, it would work a hardship on the cotton planters, and we did not want them to be scarce, and we wanted him to make more ties if he would, and he said he would make as many as he could, but that it did not pay him to make ties as against other products that he could make, that he could make more money off.

Q. Did you also request him to furnish customers of Warren, Jones & Gratz and the American, with ties?

A. Yes, sir.

Q. Will you specify what ones you asked him to furnish?

A. Well, the only particular one that I remember, was Hutchinson. Hutchinson was a friend of mine and a friend of his
911 also, and he is a pretty big handler, and I asked him particularly to sell Hutchinson some ties, because he sells a good many ties in small lots, and it was a convenience to Hutchinson to get them from him for one thing, and we did not want to furnish them to him unless we had to, but we told him if he would get them from either Atlanta or Birmingham, that we would sell him some

if he had to have them in the heat of the season, and that thing happened, and we furnished him ties. These people could not furnish as many ties as they had sold, as they made fewer.

Q. You recognized the scarcity of ties, and you wanted to have your customers protected, and you asked them to furnish your customers?

A. Yes, sir.

Q. Was it of any profit to you that that was done?

A. No.

Q. Or the American or Warren, Jones & Gratz?

A. No; it was a detriment. Every time anybody else sells it is a detriment. I get a rake-off on what Warren, Jones & Gratz sells; if anybody else sells, I don't get anything. I want Warren, Jones & Gratz to sell them all, if they could, because I make that much more money.

912 Q. Did you see Mr. Glenn of the Atlantic Steel Company?

A. Yes, sir.

Q. Did you have such a conversation with him?

A. Practically the same thing.

Q. Did you ask him to furnish customers?

A. Yes.

Q. Was this done at the instance and request of Mr. Gratz?

A. Oh, well, he—I believe he did in this specific instance ask me to get him to furnish this one fellow, because, as I say, he is a big dealer. We don't want to furnish them many ties in that territory.

Q. I mean Mr. Gratz requested you to go to these men?

A. Oh, yes.

Q. Now, to your knowledge, Mr. Brown, and the manner in which the tie sales were handled in those years, what effect did it have on checking speculation, if anything?

A. It kept it down.

Judge ROBERTS. We want to renew our objection to that testimony. We have objected to similar testimony heretofore, on the same grounds that we have objected heretofore—that is a conclusion

913 of law for a man to give an opinion as to the effect.

Mr. MAGNER. Is it not a conclusion of fact, Judge Roberts?

Judge ROBERTS. Well, I rather think——

Examiner MCCORKLE. Just note the objection and let him go on.

Mr. THOM. And it is immaterial and irrelevant also.

The WITNESS. Why? I say it kept speculation down. It kept the people from either buying and getting a lot that we could have sold. I could have done it—actually sold half again as many ties as what would take to cover the crop, in two weeks, without any trouble whatever. I could have sold half as many again if I had been allowed to have gone and sold them.

Q. And you would have gotten a commission out of it?

A. Of course.

Q. And the price of the ties would have gone up?

A. They would not have gone up with us, but the fellows that bought them could have gotten any amount they wanted to.

914 The minute we were sold out they could have done as they pleased with them. They had them before we opened the market. The testimony shows it.

Q. I will ask you to look over the list of sales of ties in 1917. The other was 1916, Mr. Brown, and I will ask you to pick out the customers on there to whom you sold ties, who were not American customers for bagging?

A. Well, Geyer Company again. Greenwood Grocery Company, W. T. Hardy, New Orleans. He buys a little stuff from the American, but you can't call him a customer. He is Ludlow's customer. John F. Jenkins, Ludlow's customer, and a manufacturer. Ludlow Manufacturing Associates, they are manufacturers. They are not customers. H. C. Newman (Ltd.), only buy from the American, when they buy bargains, and the American sell them cheaper than Ludlow. They are what you would call Ludlow's customers. J. W. Perry, Norfolk, Ludlow's customer. Young & Metzner, not customers of the American. They are manufacturers and put up sugar bag and cloth. Monroe Grocery Company, Monroe, La., they buy some bagging from the American, when they can get it cheaper or to better advantage than Ludlow, but they give Ludlow the preference. They are Ludlow's customers.

915 Q. Do you know Mr. Brown, in any of the years 1915, 1916, and 1917, if anybody who wanted the ties did not get them ultimately?

A. No.

Q. That is, that everybody got all of the ties that they required to cover?

A. Most of them over.

Q. And they got them cheaper than they got other steel articles, such as hoops?

A. Yes.

Q. And they got the bagging cheaper than they got jute, burlap, and other things?

A. Relatively cheaper; yes.

Q. And in your opinion, was that the result of the manner in which the tie market was handled by Warren, Jones & Gratz?

A. Yes, sir.

Mr. MAGNER. Judge Roberts, he is your witness.

Judge ROBERTS. Of course, the objection that we made a while ago applies to that last question.

Cross-examination by Judge ROBERTS:

916 Q. Mr. Brown, you say you have been connected with the firm of Warren, Jones & Gratz for quite a while?

A. Yes.

Q. Are you a traveling salesman?

A. Yes.

Q. You have a sort of general oversight over salesmen that travel for them, too, do you not?

A. Not particularly over salesmen, but I look after the general business.

Q. You very largely control the business, don't you, Mr. Brown—the selling part?

A. No, sir.

Q. You don't confine your operations just to any particular section?

A. Go all over, wherever we do business, practically. That is in the cotton section, and then sometimes in other sections. That is, anywhere we do business in cordage.

Q. Don't you know it is a fact that people in the early part of the season of 1916 thought it was a very difficult matter to make any arrangements to get cotton ties; is not that true?

A. Not after we started to do business; in fact, I think it was
917 very hard for them to get them any time, but they paid more money for them before we started to sell ties than they did after.

Q. Didn't Warren, Jones & Gratz, P. P. Williams & Company, and others wire almost every—and answered almost every inquiry they got, that they had no ties to offer?

A. Oh, no, sir; we sold a big lot of stuff. As soon as we began to sell goods, you know, we sold for days lots more ties than we had.

Q. Don't you recall that they showed many telegrams, which were introduced in evidence, going to show that people could not get their ties down there?

A. I know some telegrams were shown there that we refused to sell some people some ties—did not quote them or something of that kind, but they didn't have any hard time. Now, some people that you mention, like Bridewell—that broker, you know—he does not buy any ties. He is nothing but a broker for the Carolina Bagging Company. They are competitors of ours and handle other people's bags. We don't pretend to sell them.

Q. Later on in the season is not this true, that after it was ascertained that the cotton crop was going to be short, and that
918 there would be plenty of ties, then everybody could get ties that wanted them, in almost any quantity they wanted them, could they not?

A. Later in the season, when you say the cotton market was—it was certain it was going to be short, why, there was really an overplus of ties. Ties were carried over.

Q. That was in July and August?

A. No; it was not. They don't find out what the cotton crop is going to be that early. They have to wait.

Q. How early do you say they find out? I am a cotton man, myself, and I will see how much you know about it.

A. I know you are, and you never know until your crops are gathered practically—until you have got a good crop or a bad one.

Q. I can not endorse that.

A. Most everybody does. The cotton crop is not known and really never is known until it is counted. It is not known. This past crop is not known now, as far as that is concerned.

Q. No, not accurately.

919 A. But they never knew the Arkansas crop this year. That bid fair to be the biggest crop they ever raised—went all to pieces along in September or the first part of October. One man testified here in St. Louis, Mr. Plunkett, who is a representative man of that country—this whole country, as far as that is concerned, and he is a planter, and they put out a good deal of money on credit down there in that country, and they thought they were not going to have bagging and ties enough to go around, and they carried over stuff. They did not know the crop would go to pieces, and the cotton men will tell you that the crop went to pieces every way, after they thought a crop was assured, way late in the season.

Q. Well, that is the exception.

A. Yes; the exception, but there isn't any exception when it comes to knowing about the cotton crop. It is not known until September and October. We never know in our business what we are going to sell. The first sales are all right. That don't make so much difference, only a fellow whose eyes are a little bigger than his stomach, and he buys more stuff than he needs, but later on the second demand, where we in our business practically live, we

920 never know anything about that until October. We don't know whether we are going to have a big trade or a medium trade.

Q. You sell most of your ties, though, in June and July, do you not?

A. We contract for them and always over contract, too. We sell more than we ever have on hand or make.

Q. You expect, and you consent and do not object to, when a man finds that he has ordered too many, for him to cut his orders down some? You don't consider that a dishonorable business transaction, do you, if a man has ordered a great many more ties than he wants?

A. I tell you if I agree to do anything, I do it, and in our business I don't buy the goods in our concern, but I don't think it has been ever known where they defaulted on a contract.

Q. Here was the point I wanted to bring ont. I didn't know whether it is true or not, that it is sort of a custom in the business for people to just simply ask you if you wouldn't be willing to scale the orders, in case the crops turn out to be short, and you agree to it, and it is all satisfactory?

921 A. No, you don't. We fuss with them a good deal about it. You are bound to acknowledge it is not the custom or anything, but when anything goes wrong they ask you not to deliver. Now, just when we were out to lunch, Mr. Glenn and Mr. Connors and myself said——

Q. You need not tell that, because I would not want to go into everything.

A. I know, but I want to tell about the way things are done.

Q. I object to that. I don't think you ought to tell that, Mr. Brown.

A. All right. You were asking about the custom of the trade.

Q. I just wanted to know whether or not that was a custom in business?

Mr. MAGNER. You mean in this cotton game or general business?

Judge ROBERTS. In this particular business, for the reason that the crop is so uncertain, and that they reserve the right, as I understood him to say, to scale their orders down.

A. No, we don't. No, sir; you are mistaken on that.

Q. Well, I will not go any further on it. You spoke about
922 representing Warren, Jones & Gratz. Do you also represent the American Manufacturing Company?

A. Yes.

Q. What connection do you have with that?

A. Well, I sell goods for them.

Q. Who pays your salary, Mr. Brown, Warren, Jones & Gratz, or the American?

A. The American pays my straight salary, and Warren, Jones & Gratz gives me a commission.

Q. Do you own stock in both concerns?

A. No; own stock—some in the American, but none in Warren, Jones and Gratz.

Q. Warren, Jones & Gratz is a partnership?

A. Yes.

Q. Nobody in that firm except Anderson Gratz and Benjamin Gratz?

A. That is all.

Q. Why did they have Jones?

A. Jones was there for a great many years, but he went blind and lost his health—has not lost his health, but he went blind.
and could not attend to business, so he retired—got enough
923 money to live on anyhow. It was a good name, and they preferred to keep it that way.

Q. I just did not understand it at all. I believe that is all.

Redirect examination by Mr. MAGNER:

Q. Now, Mr. Brown, Mr. Roberts asked you something about the time of delivery of these ties. Was there at any time during the years 1915 and 1916 that the people who desired ties did not get them at least two months before they required them?

A. Well, if they wanted them they got them two months before they required them, but a good many people never ordered them shipped until right at the time they needed them. Nobody wants to pay for them any sooner than they have to, you know, and some times they delay ordering them out—make a contract to deliver them.

Q. You don't get my question. Was there any person who desired ties that did not get them at least two months before he required them for his purpose of covering his cotton crop?

A. No.

924 So, everybody got ties in plenty of time if they wanted them?

A. If they wanted them.

Q. Has it not been the rule in this last two or three years that the price of ties—this holding them over for each year—they have been dearer previous to the opening of the price by Warren, Jones & Gratz?

A. The past three years.

Q. You don't know positively what the price will be this year?

A. No.

Q. What is the best of your information as to whether the prices are dearer now than they will be when the price opens?

A. I know some of those have been lower down in Georgia, and people have bought them and paid for them, and they will buy them when we start to sell them a good deal cheaper; buy them a good deal cheaper than these people paid for them; but they as a speculative proposition; the market has not been made.

By Examiner McCorkle:

925 Q. There is a good deal of talk about selling ties to speculators. Do you have anything to do with people to whom you sold these ties as to what profit they shall make?

A. No, sir.

By Mr. Magner:

Q. Was there any understanding that there would be a rebate given to anybody?

A. No, sir.

Q. Or any profit of any kind, beyond the price you put on the ties?

A. No.

Q. Was there any price made to any one that was not given to anybody—a price for all?

A. Well, there might have been changes in price. The quantity price—we have a quantity price and a less than quantity price.

Q. What I mean, it was a general price for everybody? Of course, your price may change from day to day?

A. No; it did not change from day to day. We had a quantity price. A fellow that bought in jobbing quantities, we would sell him a little cheaper or give him something off on it. The trade commission, as you know; it has been explained.

Q. But all jobbers got them?

A. Yes.

926 Q. You did not make fish of one and flesh of another?

Examiner McCorkle. No discrimination.

Q. You understand what I mean?

A. Yes, sir.

Q. That is a fact, is it not?
A. Yes.

CHARLES W. PRIDDY was called as a witness in behalf of the respondents, being duly sworn, testified as follows:

Direct examination by Mr. MAGNER:

Q. Where do you live?
A. Norfolk, Va.
Q. Your business?
A. President of the Norfolk Bagging Company, manufacturers of bags and jobbers of bagging and ties.
Q. In addition to that, have you other business?
A. Yes, sir; I am connected with other concerns.
Q. State what they are?
A. In the fertilizer business; I am president of the Pocomoke Guano Company, manufacturers of fertilizer.
Q. Are you acquainted with the firm of Warren, Jones & Gratz?
927 A. Yes, sir.
Q. And the American Bagging Company?
A. Yes, sir.
Q. And with Mr. Brown, their representative?
A. Yes, sir.
Q. You have had business dealings with them for a number of years?
A. Yes, sir.
Q. You also deal with other concerns for bagging than the American?
A. Yes.
Q. For instance, from whom do you buy your bagging principally?
A. Well, I buy from anybody. Principally I buy from other people—from the Riverside Mills and I have bought from the Texas people; I have bought from the Carolina people; buy from Young—sugar bag cloth; Federal Sugar Company; from the Arbuckle Company, and somebody else that I can not just recall at this moment.
Q. You are for your country rather a large dealer?
A. Fairly so.
Q. You can say that with modesty?
928 A. Yes, sir.
Q. By no means the principal part of your business is done with the American?
A. Well, we probably do more business with the American than either one of the others.
Q. But on the whole, you do less with them than the others combined?
A. No; I should not say that, sir. It would be rather hard for me to tell offhand how the business is divided up. We do a consid-

erable business with the American, and we do business with the oth people. It varies.

Q. You have purchased, have you not, from the firm of Warre Jones & Gratz ties—Carnegie ties?

A. A great many; yes.

Q. Have they ever refused to sell you ties to cover the other bu ging sold or bought by you from other than the American?

A. No, sir.

Q. They have sold you ties that you needed, or to cover your bu bought from these other concerns?

A. Yes, sir.

Q. And always have done that?

A. Yes, sir.

929 Q. Now, were you asked by Mr. Gratz or any one fr his firm, in 1916, to buy your ties from another firm th Carnegie, and from them?

A. Yes, sir.

Q. Will you state what was requested of you?

A. My recollection is that before the tie market opened I ha pened to meet Mr. Gratz, and we were talking about conditions, a he told me that the indications were that there would be a shorta in ties; that some manufacturers who had heretofore made ti would probably not make them that year, and owing to the existi conditions, it was quite probable that some of the manufacture that did make them would not make as many as they had made he tofore, and he thought it would be well if I would try to buy t from some of the manufacturers located in the southeastern ter tory—that is, at Atlanta and Birmingham. As a matter of ec omy, it would be proper for those ties made there to be distribute in that territory, and he thought it would be well to see if I cou buy some ties from them. Acting on that, I got in communicatio with Mr. Conners, of Conners-Weyman & Co., by wire an

930 mail, and asked them to sell me ties, which they declined to d saying that all they expected to make would be taken by the regular customers, and they did not care to take on any othe trade. I made a personal visit to see Mr. Glenn, of the Atlanti Steel Co., and he gave me practically the same reply.

Q. So that Mr. Gratz was compelled to furnish you these tie after all?

A. Yes, sir.

Q. When he suggested you go to these other tie makers, did h speak of receiving any commission for that of any kind?

A. No, sir.

Q. In other words, it was a loss of business for him?

A. Yes, sir.

Q. And he requested you to go, knowing that he would los your business?

A. Yes.

Q. You are a large dealer in fertilizer, and connected with large manufacturers?

A. Yes, sir.

Q. Are you an officer in any of those concerns?

A. Yes, sir.

Q. Are you familiar with the agricultural conditions in the South, by reason of your being connected with this fertilizer institution?

A. In the southeastern territory, by which I mean that territory east of the Mississippi River.

Q. Does your concern furnish there very extensively quantities of fertilizer?

A. Yes, sir.

Q. Have you any objection to stating the amount of it?

A. Well, no, I would have no objection if I could state with any degree of accuracy, but that is distributed by our company, to a great many different offices and different factories, over which I have no supervision, and I could not tell you with any degree of accuracy the amount of business that our company does in that particular territory.

Q. What is the company?

A. The American Agricultural Chemical Co. is the parent company. If you desire to know about the consumption of fertilizer from all companies in that territory, I can tell you.

Q. No; I just wished to qualify you to give an opinion afterwards on another question I was going to ask you. Could you say what would be the effect of an inequitable or lack of distribution of ties in the South, in these years?

A. It would work a very great hardship, not only on the fertilizer interests, but on many other interests.

Q. Cause loss, not only to the agricultural community, but to those who were depending upon it—bankers?

A. Yes, sir; I could probably answer your question better—I might say that there are about 4,000,000 tons of fertilizer consumed in the States of Alabama, Georgia, North Carolina, South Carolina, and Virginia, each spring, which 4,000,000 tons would amount to about $100,000,000, and the probabilities are of that sale there is about 25 per cent paid in cash, leaving about $75,000,000 which falls due about the first of October in the fall, and the people are dependent upon the marketing of their cotton crop to meet those obligations.

Q. And failure to market their crop, would be a failure to pay that amount of money?

A. Failure to pay that amount of money, and it would very seriously, if not absolutely ruin the fertilizer interests, as well as the banking interests, because the bankers in that territory advance very largely during the spring and summer, supplies payable in the fall, which payments are made nearly

entirely out of the cotton crop, and it would very seriously em barrass them.

Q. Was that subject discussed by you and Mr. Gratz at the tim he spoke about the possibility of shortage?

A. He mentioned the fact to me he was putting forth ever possible effort to get the tie mills, all of them to make ties enoug to meet that necessity, so as to enable people to market their t crop in time.

Mr. MAGNER. Your witness.

Cross examination by Mr. THOM:

Q. You stated that you were connected with the Norfolk Ba ging Company, and what is the name of the fertilizer company?

A. Pocomoke Guano Company, which is a subsidiary of t American Agricultural Chemical Company.

Q. Are not you also connected with some firm that bears you name?

A. Yes.

934 Q. What business is that?

A. Manufacturers of agricultural lime, plaster and cemen

Q. Can you say about the percentage of American brand ba ging that you handle, of all the bagging?

A. Well, do you mean in yardage, or dollars and cents?

Q. In yardage?

A. I could not say with any degree of accuracy. I can ap proximate.

Q. That is what I mean.

A. I should say possibly two-thirds.

Q. How long have you been handling that?

A. American bagging?

Q. Yes, sir.

A. Some 20 years or more.

Q. You are their representative in that section, are you not, o the American Manufacturing Company?

A. Not exclusive. They sell anybody they want to.

Q. Haven't you some special arrangements with them, however

A. Well, we have an arrangement by which we operate on a commission for them.

Q. As I understand this, your method——

935 A. I mean that they have nothing to do with what we handle for other people.

Q. I understand that. I mean as to the American Manufacturing As I understand it, your method of distribution of the bagging is by salesmen sent out through the different States. Is that right?

A. Yes, sir.

Q. Are you aware that your salesmen stated they would not sell and could not sell the American bagging, or the ties, without a corre sponding amount of American bagging, in the years 1916 and 1917?

A. Well, I could not undertake to say what a salesman said. I was not present. I do not know.

Q. Were there any instructions from your office to that effect?

A. I think it is probable not in 1917, nor I think in 1916. I don't think they had any instructions of that kind.

Q. How about 1915?

A. In 1915, for a few days, when it was not certain as to how many ties we would get, I think I told the sales men not to sell bagging except with a proportionate quantity of ties, but that was changed very shortly, I think.

936 Q. Was that pursuant to your own initiative or pursuant to information you had received from the American Manufacturing Company or Warren, Jones & Gratz?

A. My recollection is that it was derived from a general knowledge of the situation.

Q. Did you have some communications with Warren, Jones & Gratz or the American Manufacturing Company on the subject?

A. I think, Mr. Thom, that in general conversation and in a general way, I understood that a proper procedure would be for me to furnish—to take care of our regular bagging customers as far as was practicable with the ties that we had.

Mr. THOM. That is all.

By Examiner MCCORKLE:

Q. Where are the headquarters of the American Agricultural Chemical Company?

A. In New York.

Examiner MCCORKLE. Any more witnesses?

Mr. MAGNER. I have three witnesses, but I did not bring them to-day because I recognized—in fact, I thought we would be longer, and to-morrow is a holiday with us—Saturday is a half
937 holiday, and I would like another day, and then I will finish up—whatever day that you will name.

(Whereupon, at 4.15 p. m., the hearing was adjourned subject to the call of the Commission.)

938 Before the Federal Trade Commission.

FEDERAL TRADE COMMISSION
vs.
WARREN, JONES & GRATZ ET AL. } Docket No. 12.

Washington D. C., April 26, 1918.

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940 Before the Federal Trade Commission.

FEDERAL TRADE COMMISSION
vs.
WARREN, JONES & GRATZ.

WASHINGTON, D. C., *April 26, 1918.*

Met pursuant to notice at 10 o'clock a. m.

Before: Mr. George McCorkle, examiner.

Present: Judge Roberts and Alfred P. Thom, jr., for the Federal Trade Commission.

Appearances: Mr. Thomas F. Magner, for respondents.

Miss CATHERINE SMALL, called as a witness in behalf of the respondents, being first duly sworn, testified as follows:

Direct-examination by Mr. MAGNER:

Q. Where do you live, Miss Small?

A. Woodhaven, Queens Borough, New York City.

Q. You are employed by the American Manufacturing Company?

A. Yes, sir.

941 Q. And have been for how many years?

A. Twenty-two years.

Q. What are your duties connected with the company?

A. My title is credit manager.

Q. Have you charge of the bagging department of the company?

A. Of the sales of the bagging in the Southeast, and also the deliveries against all those sales.

Q. By that you mean east of the Mississippi River?

A. I mean east of the Mississippi River, such part as is sold by the New York office.

Q. Those that are sold by any other office come through the New York office afterwards, do they not?

A. You mean the orders?

Q. Yes; all sales east of the Mississippi River come through the New York office, do they not, eventually?

A. Reports of the sales do, but our Charleston mill sales do not come to the New York office.

Q. Are you familiar with all the sales of bagging east of the Mississippi River of the American Manufacturing Company?

A. Yes, sir.

Q. Are any of those sales made by the firm of Warren, Jones & Gratz?

A. No; excepting Mobile, and I call that east of the Mississippi.

Q. One place, Mobile?

942 A. One place.

Q. West of the Mississippi River the firm of Warren, Jones & Gratz sell?

A. Yes, sir; for our company.

Cross-examination by Mr. ROBERTS:

Q. Miss Small, why is it that the sales at Mobile are made by Warren, Jones & Gratz and not at any other Southeastern point?

A. I can not tell you exactly. We have one firm in Mobile who used to be sold from the New York office, but as I recall it, this was done before I had entire charge of this department, as I recall it. I think that the shipments of bagging to Mobile were made more often from St. Louis than New York, so they asked us to turn that customer over to them.

Q. What proportion of the business would you say that the Charleston office does in the Southeastern territory, I mean as compared to the business down at the New York office?

A. Why, about the same as the New York office, sometimes we vary, sometimes their sales are a little more than ours, and sometimes our sales are a little more than theirs. Last year we were about even—1917.

Q. Does the Charleston factory manufacture as much bagging as as the Brooklyn factory, approximately as much?

943 A. The last few years more.

Q. More?

A. Yes, sir.

Q. Is there any division of territory between the New York office and the Charleston office?

A. To a certain extent; yes.

Q. Does the New York office solicit trade or sell goods in the same cities and to the same people, the same jobbers and dealers, as the Charleston office?

A. In one or two instances; yes, sir.

Q. Only one or two instances?

A. Yes; one or two instances where the customer feels like he wants to divide his business between two brokers in the same town. I have only one instance in mind.

Q. Certain cities in the Southeast, so far as the trade is concerned, belong exclusively to the New York office then, do they, and certain other cities exclusively to the Charleston office? Is that the way you do it?

A. No, sir; it is just that certain concerns, jobbers or merchants, have been in the habit of buying through the New York office or from the New York office, and we advised them of prices of bagging when the price is made for the season. They have the privilege of buying from Charleston if they wish or vice versa.

944 Q. Are the prices uniform on bagging delivered at any southern point whether it goes from the Charleston office or the New York office? Does it cost the purchaser just the same or not?

A. The prices are usually made cost and freight via Atlantic ports—that is, Savannah or Charleston or Brunswick—and they are the same.

Q. So that the jobber does not pay any more for it bought from one place than he does from the other?

A. No, sir.

Q. The New York office controls the policy and the business of the Charleston office, does it not?

A. Yes, sir.

Q. The headquarters are in New York?

A. Yes, sir.

Q. Is it true that Mr. Anson Gratz controls the business of the New York office?

A. I do not know that he does.

Mr. MAGNER. I do not think this witness is competent to testify to that any way. She does not know.

The WITNESS. I do not know just what he means by the question.

By Mr. ROBERTS:

Q. I mean is he the active manager of the business at the
945 New York office, Mr. Anson Gratz?

A. No; not entirely, I should not say.

Q. He has more authority there than any other person, has he not?

Mr. MAGNER. I do not think this witness could say.

Mr. ROBERTS. If she knows, I just want to see if she knows.

Mr. MAGNER. How could she know? It is a corporation that has offices, and it appears that Mr. Gratz is only one of the many officers; he is only vice president; there is the president there and the treasurer. Mr. Gratz is there only comparatively a short period in the year. Even if this witness said yes or no, what effect would it have?

The EXAMINER. It would go for what it is worth.

By Mr. ROBERTS:

Q. You can answer what are Mr. Gratz's duties in the New York office of the American Manufacturing Company?

A. Why, I don't know. I don't know as I could define his duties. He is one of the vice presidents.

Q. Well, he is what they call the first vice president, is he not?

A. He is the first vice president. He has his assistants now.

Q. Do you know the president of the American Manufac-
946 turing company?

A. Yes, sir.

Q. Who is he?

A. Mr. J. D. Filley.

Q. Where does he live? Does he live in New York, St. Louis, or where?

A. I do not believe I could tell you exactly. He did live in St. Louis. He goes back and forth, and I do not really know whether his home is in New York or St. Louis.

Q. Miss Small, does he, so far as you know, have any very active connection with the business of the office in New York, Mr. Filley?

A. Why, they confer, the officials confer together; he signs checks at times and goes over papers.

Q. When Mr. Filley is not there, and he is in St. Louis or somewhere else, if any important matter was to be decided or passed on in the office, who would it finally go to for settlement? Would it be Mr. Anderson Gratz, or who would it be?

A. It would depend on the business.

Mr. MAGNER. I submit this witness could not say that.

Mr. ROBERTS. I think she is the best judge as to whether she could say that or not. If she can not say that, she has only to say so.

947 The WITNESS. Mr. Anderson Gratz does not usually pass on them alone.

By Mr. ROBERTS:

Q. Not alone?

A. No, sir; there are two other vice presidents there.

Q. Do not the officials and employees there, when they have any difficulty in deciding anything, always refer it to Mr. Anderson Gratz, and does he not settle it finally in most instances?

A. No, sir; not always.

Mr. MAGNER. I submit that whatever answer this witness gives it would have no bearing on it. She does not know these things.

Mr. ROBERTS. She has stated she has been in the office 22 years, and she certainly must know a good deal about what is going on there. She is a very intelligent woman, I take it.

Mr. MAGNER. We will concede all that.

The EXAMINER. Let her say what she thinks about it.

Mr. MAGNER. All right.

By Mr. ROBERTS:

Q. I want to know who is in supreme command there, in the absence of Mr. Filley, in the New York office?

948 A. I do not believe I could answer that straight out. There are various questions that come up. We have other departments.

Mr. MAGNER. I ask Mr. McCorkle to instruct the witness to answer only what she has of her own knowledge.

The EXAMINER. Yes.

Mr. MAGNER. What you know yourself; do not answer or say you do not know.

By Mr. ROBERTS:

Q. I should like for you to answer who is in supreme command of the New York office of the American Manufacturing Company with relation to the business affairs of the company. Can you answer?

A. I could not say any one man was. It depends on whoever is there at the time when the question comes up.

Q. Well, if anybody there has more authority than Mr. Anderson Gratz, Miss Small, please state who it is. I mean with respect to that business?

A. I do not know whether Mr. Anderson Gratz or whether Mr. J. D. Filley, or Mr. F. H. Filley.

Q. You would consider those two have more authority than any other two, would you not?

A. I should consider so.

Q. That is your opinion about it?

A. That is my opinion.

949 Q. What proportion of the time during the business season would you say that Mr. Filley is at the office in New York, present and taking part in the management of the business?

A. As near as I can say he is there a month to two months at a time, and he may be away the same length of time and back again. He may be there four months and be away two weeks or three weeks.

Q. Is Mr. Filley a very old man?

A. No, I should not call him a very old man.

Mr. MAGNER. I will say for your information that he is younger than Mr. Gratz.

The WITNESS. That is something I did not know.

Mr. ROBERTS. I had gotten the wrong impression about that.

Mr. MAGNER. Yes, sir; he is a younger man than Mr. Gratz.

Mr. ROBERTS. I am sorry I asked it, if he is not old.

Q. Your New York office does not sell anything west of the Mississippi River, does it, Miss Small?

A. No bagging.

Q. That is what I mean, no bagging. I believe you stated that all the sales east of the Mississippi River of bagging are either made by your New York office or your Charleston office,

950 except at the city of Mobile.

A. Yes, sir.

Q. Now, west of the Mississippi River, you state that Warren, Jones & Gratz sell the bagging there?

A. Yes, sir.

Q. What proportion of the entire amount of bagging manufactured by the American Manufacturing Company would you say is sold west of the Mississippi River, considering the St. Louis factory and all?

A. It varies, but I should say that their sales are two-thirds.

Q. That Warren, Jones & Gratz's sales are two-thirds of the total amount sold?

A. Of the total amount of sales.

Q. And that the Brooklyn office and the Charleston office sell the other one-third combined; is that true?

A. Yes, sir; it may be one-fourth at times, but about that way.

Q. Is it not true, Miss Small, that that grows out of the fact that in the Southeastern States you have much more competition than you do in the States west of the Mississippi River in the bagging business? You have bagging factories and more competition, do you not?

A. You mean the lesser sales are due to that fact?

951 Q. Yes.

A. I do not know that.

Q. You do not know what that is attributable to of your own knowledge?

A. No; I think there is more business west of the Mississippi River to a certain extent, larger buyers. West of the Mississippi River includes Texas.

Q. Coming to the methods that the American Manufacturing Company adopts in distributing that territory east of the Mississippi River, do you sell direct to jobbers, or do you have agents who sell for you, or how do you do that?

A. The New York office?

Q. Yes.

A. We sell most of it direct. We have two or three brokers and one agent—practically two agents.

Q. Where are those agents located?

A. One of them in Thomasville, Georgia.

Q. What is the name of that firm, do you recall?

A. That is Mr. W. P. Sparks.

Q. Where is the other agent?

A. Then there is another large—I do not know as I would call them exactly an agent, we do not sell them as agents, we sell them direct—the Norfolk Bagging Company in Norfolk, Virginia.

152 Q. They sell for your company on commission, do they not, the Norfolk Bagging Company?

A. I do not recall whether it is exactly commission. It is profit in some way.

Q. They get a certain profit out of the sales they make?

A. Yes, sir.

Q. You do not sell to them direct?

A. No; we do not sell to them direct.

Q. Your other sales are made direct as far as you are able to recall?

A. They are made direct.

Q. Miss Small, are you able to answer how the Charleston office sells—the Charleston mills—how they distribute their bagging—what methods they adopt in the distribution of their bagging?

A. Yes, sir.

Q. How is that done; do they sell direct, or do they have certain agents or brokers?

A. They sell direct entirely, just as we do, with the exception that they have one salesman; in very busy seasons they have two.

Q. You mean a traveling salesman?

A. One traveling salesman; yes, sir.

153 Q. Do they have any agents or brokers through whom they sell?

A. I believe they have several brokers.

Q. And the New York office has quite a number of brokers through whom it handles its product, does it not?

A. Only three.

Q. Where are they located, please?

A. One in Rome, Georgia; one in Savannah; that is all, excepting a New York firm through whom we sell a Georgetown, South Carolina, firm and pay them brokerage.

Mr. ROBERTS. That is all we care to ask.

Redirect examination by Mr. MAGNER:

Q. All these sales in the southeast are reported to the New York office and to you, and with the exception of Mobile all east of the Mississippi River Warren, Jones & Gratz have nothing to do with?

A. With the sale of it; no, sir.

Q. And receive no commissions?

A. No, sir.

Q. In regard to the officers of the company, you say you have been with them for 22 years. The office building is at West and Noble Streets, is it not?

A. Green Point, Brooklyn.

954 Q. And the offices are on several floors, are they not?

A. Yes, sir.

Q. And Mr. Gratz has a private room of his own?

A. Yes, sir.

Q. And Mr. J. D. Filley has a private room of his own?

A. Yes, sir.

Q. And Mr. F. H. Filley, vice president, has another private room of his own?

A. Yes, sir.

Q. And Mr. R. B. Brown, vice president, has another private room of his own?

A. Yes, sir.

Q. Mr. Charles McAlister, another vice president, has another private room of his own?

A. Yes, sir.

Q. And these rooms are on separate floors and some of them contiguous to each other?

A. Yes, sir.

Q. You are in a different part of the building from any of them, are you not?

A. Yes; I am away from the other end of the building.

Q. And you only come in contact with them as you are called in for instructions or information?

955 A. As I am called in or as I go in for——

Q. Instructions or information?

A. Instructions or having some decision given.

Q. And Mr. F. H. Filley, Mr. R. D. Brown, and Mr. Charles McAlister, vice presidents, are always there, are they not?

A. Yes, sir; with the exception of a few hours at a time.

Q. With the exception of vacations or sickness, they are always there?

A. Yes, sir.

Q. Mr. F. H. Filley is always there?

A. Yes, sir.
Q. Mr. J. D. Filley and Mr. Gratz are frequently there together?
A. Yes, sir.
Q. At the same time?
A. Yes, sir; at times.
Q. For weeks and weeks together?
A. Yes, sir.
Q. When one goes away there is always the other to remain?
A. Yes, sir.
Q. And in the absence of the one you would consult the other?
A. Yes, sir.
Q. And you would consult all of them as occasion requires, depending on the department that they have charge of?
956 A. Yes, and most of the time the three of them come together if I come in there about any matter.
Q. That is, Mr. F. H. Filley, Mr. J. D. Filley, and Mr. Gratz?
A. Yes, sir.
Q. The three of them discuss it in your presence?
A. Yes, sir.
Q. And the three of them reach a decision?
A. Yes, sir; as far as I know.
Q. And that has been the custom since you have been called in before them, since you have been in their employ?
A. Yes.
Q. During 1916 the American Manufacturing Company purchased 500,000 bundles of ties, did they not?
A. Yes, sir.
Q. Do you know whether any part of those ties were sold by the company in the territory in the southeast without bagging?
A. Yes, sir.
Q. To what extent?
A. As I recall it, to just one customer.
Q. You do not know of any others?
A. No, sir.
957 Q. That did not come under your direct supervision, did it?
A. I can only say positively to what the New York office did there, because everything in the New York office in that line goes through me. I answer all their correspondence, but I can not say as to the Charleston office. I do not remember.
Q. You do not remember whether any of those ties were sold through St. Louis in the southeast?
A. Not in the southeast.
Q. You do not remember?
A. I do remember; they were not sold through Warren, Jones & Gratz in the southeast.
Q. Any ties that were sold in the southeast you know were not sold through Warren, Jones & Gratz?

A. They were not sold through Warren, Jones & Gratz in the southeast.

Mr. MAGNER. I think that is all.

Mr. ROBERTS. We have nothing more to ask, Miss Small.

Mr. MAGNER. That will complete our case, except I had introduced in evidence the report of the Secretary of Commerce on the investigation of bagging and ties, made in 1913. I wish particularly to have that part of the record, pages 47 to 54 of that report, as a part of this record. This is the same thing that was investigated
958 here by the Department of Commerce, and it embraces the years previous to these, and it shows the conditions before, and it has relevancy showing the conditions before, and what the conditions are here, and the efforts that we claim we have made to keep the price of these things down. Our contention is we ought to be commended instead of being investigated.

Mr. ROBERTS. You do not want to introduce any portion of that except the pages mentioned?

Mr. MAGNER. No; unless there is something else you want in it.

Mr. ROBERTS. From the heading, "Consumption and Production in the United States," at the bottom of page 47, down to the heading, "Cause of Shortage," near the bottom of page 54?

Mr. MAGNER. Yes.

Mr. ROBERTS. We do not object to that.

(The pages introduced by respondents, referred to above, being a portion of Senate Document No. 213, entitled "Cotton Bagging and Ties," is as follows:)

959 "COTTON TIES.

A cotton tie is a hoop rolled to a certain gauge and length and having buckles adjusted to the tie for the purpose of baling the cotton. Cotton ties are made by mills which also make steel hoops, three-eighths to 3 inches wide and one-fortieth to one-tenth inch thick, for use in the manufacture of barrels, buckets, etc.; light bands, three-eighths inch to 6 inches wide and one-eighth to three-sixteenths inch thick, for wooden tanks, vehicles, cars, etc., and similar products. Concerns making cotton ties claim that there is more money in manufacturing the other types of hoops and bands, and this is given as the reason why two of the mills made no ties this year, with the result that there is a shortage. The president of the Carnegie Steel Co. states that it also makes a larger profit on the other types of hoops, but that someone has to make cotton ties and that though there is now a shortage it expects before the end of the season to make enough to fill the requirements of the year's crop.

The cotton ties used in the United States for baling cotton are plain steel strips about seven-eighths inch wide, and with a thickness of 19 B. w. g. (Birmingham wire gauge) equal to 0.042 inch, and about 11½ feet long. With each tie is a flat steel buckle,

rectangular in shape, with a rectangular opening punched out of the middle and an opening at one side. The ends of the ties are bent back after being passed through this buckle and are held in this way. After the tie is rolled it is dipped in tar to prevent rusting. Six ties are required for each bale at the gin, and when the bale is compressed to a smaller size the ties are recut and riveted together to make seven or eight, so that the same weight of ties is used on both square and compress bales. Each tie weighs 1½ pounds, so there are 9 pounds of steel ties on each bale. Ties are put up and sold in bundles of 30 (sufficient for 5 bales), and prices are quoted on this basis. A bundle of 30 ties weighs 45 pounds.

CONSUMPTION AND PRODUCTION IN THE UNITED STATES.

The ordinary cotton crop now averages about 12,000,000 bales, and for this there are needed 72,000,000 ties, or 2,400,000 bundles, while the record crop of about 16,000,000 bales required some 96,000,000 ties, or 3,200,000 bundles.

The concerns making cotton ties in the United States, together with their ordinary annual output, are as follows:

Company.	Location.	Bundles.
Carnegie Steel Co.	Pittsburgh, Pa.	1,500,000
Pittsburgh Steel Co.	do.	300,000
Sharon Steel Hoop Co.	Sharon, Pa.	100,000
Atlanta Steel Hoop Co.	Atlanta, Ga.	300,000
Connors-Weyman Steel Co.	Helena, Ala.	150,000

It is estimated that ordinarily there are used some 300,000 bundles of secondhand ties that are sold by the cotton mills, and these, with the output of new ties above stated, make up the bundles ordinarily required.

The capacity of the Carnegie is some 1,900,000 bundles, which is the amount it expects to make this year. The capacity of the Pittsburgh and Sharon companies is some 400,000 bundles, but they are making none this year. The capacity of the Atlanta company is about 350,000 bundles, and of the Connors-Weyman about 150,000 bundles. The deficit in the supply of cotton ties this year caused by the failure of the Pittsburgh and Sharon companies to manufacture any will be made up partly by an increased output by the Carnegie and the two southern companies and partly, probably, by a much larger use of secondhand ties.

IMPORTS OF COTTON TIES.

The import of cotton ties into the United States is entirely negligible, as is shown by the following statistics of imports of—

Hoop or band iron, or hoop or band steel, cut to lengths, or wholly or partly manufactured into hoops or ties, coated or
962 not coated with paint or other preparations, with or without buckles or fastenings, for baling cotton or any other commodity.

Years.	Pounds.	Value.	Rate of duty.	Amount of duty received.	Av. value per pd.	Equivalent val. duty.
						P. C.
1900	1,147,702	$23,191.50	0.5 c. per pound	$5,738.52	$0.020	24.7
1901	729,552	12,937.00	do	3,647.77	.017	28.2
1902	4,309,207	68,247.00	do	21,546.05	.016	31.5
1903	2,474,578	39,410.00	do	12,372.89	.016	31.4
1904	2,108,688	33,438.00	do	10,543.44	.016	31.5
1905	515,200	7,136.00	do	2,576.00	.014	36.0
1906	4,873,746	70,442.00	do	24,368.73	.014	34.6
1907	716,819	20,805.00	do	3,584.10	.029	17.2
1908			do			
1909			do			
1910	499,529	9,389.00	0.3 c. per pound	1,498.58	.019	15.9
1911	54,939	567.00	do	164.82	.010	29.0
1912	826,762	15,094.00	do	2,480.26	.018	16.4

It is seen that the imports of hoops and bands suitable for baling cotton is too small to be considered as a source of supply, and even of the small amounts imported a portion is probably for
963 other purposes than baling cotton.

OUTPUT AND PRICES OF CARNEGIE STEEL CO.

The Carnegie Steel Co., which is a subsidiary of the United States Steel Corporation, furnishes the following statement of cotton ties made by it since 1901:

Years.	Number of bundles delivered to customers.	Number of bundles on hand or carried as of Jan. 1.	Yearly selling price per bundle f. o. b. Pittsburgh
1901	1,712,133	(1)	$0.75
1902	1,499,449	(1)	.85
1903	1,168,496	(1)	.85
1904	1,504,786	439,242	.85
1905	1,249,491	295,511	.85
1906	1,607,688	482,692	.85
1907	1,329,954	213,536	.95
1908	1,470,649	285,772	.85
1909	1,663,291	43,243	.75
1910	1,199,116	551,718	.75
1911	1,578,462	602,786	.75
1912	1,550,342	254,786	.75
1913	[2] 1,900,000	177,132	.80

[1] Not recorded.
[2] This is the number of bales that the company intends to make this year.

964 The record high price was 95 cents a bundle, in 1907, and the price this year is a normal one, 80 cents a bundle. The company claims that the high price at which ties are selling in the South to-day (August, 1913), is not due to the primary price, but to the fact that there is a shortage of supply due to the failure

of the Pittsburgh and the Sharon companies to manufacture this year, and that though the Carnegie Company has not taken advantage of this situation southern jobbers are using the temporary shortage to boost their prices and make excessive profits in handling.

The Carnegie Company commences producing ties in October of each year for the crop of the succeeding year and has to store these ties until the season for ties is opened, usually in May or June of the next year. It does not receive payment for the ties until several months after they are rolled. Jobbers, on the other hand, state that the Carnegie will not sell them ties in advance, but waits until the bagging season has been opened by the American Manufacturing Co. making quotations.

The Carnegie Steel Co. sells exclusively through the commission firm of Warren, Jones & Gratz, of St. Louis, to whom it grants a small commission. Warren, Jones & Gratz also handle the bagging of the American Manufacturing Co. (with which concern, through their personnel, they are closely allied) and usually supply bagging and ties together. The Ludlow Manufacturing Associates
965 (the only other bagging company) buy their ties through Warren, Jones & Gratz.

AMERICAN-MADE TIES USED IN INDIA.

It is not probable that a high duty or no duty at all will make the slightest difference in the import of ties, for the distance from the foreign mills and the low cost of manufacture in American steel mills practically prohibit competition unless the prices are pushed up to a much higher level than has yet prevailed. The Carnegie Steel Co. now ships some 5,000 tons of steel ties a year to India for use in baling cotton, and also supplies some cotton ties to Egypt.

It may be noted that the cotton ties used in India and Egypt are different from those used in America, in both size and method of fastening. In India there are used only three ties to a bale, and these are 5/8 inch wide by 28 feet long. The compresses are made with 11 tie openings, and before the pressure is taken off each of the narrow ties is passed through these openings some three or four times, being threaded around and around and the ends then tucked under. When the pressure is taken off, the expansion of the bale holds the ties firmly in place without the use of any buckles, which is an advantage, as loose buckles are a frequent source of tires when they get into a picker at the cotton mill. Egyptian bales are
966 bound with 11 ties, weighing some 12 pounds total. The ties are wider and thicker than the American, and at each end have rectangular slits punched, and these are fastened together with an iron collar button. Indian bales are uniformly 400 pounds in weight, while Egyptian bales vary from 720 to 850 pounds with a standard weight of 784 pounds (7 hundredweight). American bales vary from 400 to 600 pounds in weight, with a standard of 500 pounds. At a conference held at Atlanta in 1907 the International Federa-

tion of Master Cotton Spinners' and Manufacturers' Association recommended the adoption of ties of the Egyptian type with collar button fastenings.

COST OF PRODUCING TIES.

In Part II of the Report of the Commissioner of Corporations on the steel industry there is given on page 240 the book cost of producing cotton ties in the years 1902 to 1906, as follows:

Average book cost of cotton ties by years, 1902–1906, in dollars per gross ton.

967 Item.	1902	1903	1904	1905	1906	Total and averages for five years.
Gross tons produced	27,052	22,348	21,740	25,761	25,412	122,[illegible]
Small billets	$26.54	$22.28	$18.83	$18.09	$18.73	$[illegible]
Labor	4.30	4.48	4.08	4.25	3.99	[illegible]
Fuel	.45	.64	.53	.46	.47	[illegible]
Steam	1.15	1.38	1.25	1.31	1.17	[illegible]
Rolls	.16	.25	.26	.28	.32	[illegible]
Materials in repair and maintenance	.46	.25	.22	.52	.35	[illegible]
Supplies and tools	.72	.57	.51	.49	.48	[illegible]
Misc. and general works expense	.77	1.11	1.01	1.05	.95	[illegible]
Mill cost	34.55	30.95	26.79	26.45	26.46	[illegible]
Additional cost:						
Gen. and misc. expense	1.23	.87	.83	.45	.61	[illegible]
Depreciation	.72	.82	.50	.42	.75	[illegible]
Total book cost	36.50	32.65	28.12	27.32	27.82	[illegible]
Prices of small billets used	$25.23	$21.07	$17.69	$17.17	$18.06	$[illegible]
Pounds of small billets used	2,430	2,476	2,487	2,470	2,418	[illegible]
Price of scrap recovered	$11.07	$11.12	$9.05	$8.75	$9.71	$[illegible]
Pounds of scrap recovered	169	202	201	216	176	[illegible]
Net cost of waste	$1.31	$1.21	$1.14	$0.92	$0.67	$[illegible]

967½ Raw material.—The raw material for the production of cotton ties was small Bessemer billets, the average cost of which for the five-year period, 1902 to 1906, was $20.99 per ton, ranging from $18.09 per ton in 1905 to $26.54 in 1902.

A considerable quantity of the small billets was transferred at a profit over the mill cost of producing them. The transfer profit charged as related to the total quantity of small billets used amounted to about $1 per ton of billets, which was equivalent to $1.07 per ton of cotton ties produced. In other words, the cost of cotton ties was increased $1.07 per ton on account of the profit realized by allied companies or departments on the small billets transferred to the plants using them for making cotton ties. The average price at which the small Bessemer billets were used was $19.93 per ton, and ranged from $17.17 per ton in 1905 to $25.53 per ton in 1902.

The average net cost of waste, which is the connecting link between the price of small billets used and the cost of the small billets per ton of cotton ties, was $1.06 per ton. The variation in the average net cost of waste, by years, was considerable—from $0.67 per ton in 1906 to $1.31 per ton in 1902. This large variation was due principally to differences in the price of small billets.

Cost above material.—The average cost above material for the five-year period, 1902 to 1906, was $8.14, or 27.9 per cent of the mill-cost material. The average cost of labor was $4.22 per ton and ranged from $3.99 per ton in 1906 to $4.48 per ton in 1903. The items of cost above material other than labor amounted to $3.92 per ton.

Additional cost.—The items under this head were derived from the profit and loss account of the companies and apportioned by the Bureau of Corporations to the several products. They included (1) general and miscellaneous expense, and (2) depreciation. The average cost of general and miscellaneous expense for the five-year period was $0.80 per ton, and the average cost of depreciation for the same period was $0.64 per ton. As repeatedly noted, these additional costs are cumulative, as the raw materials for the different stages of production were used at furnace, works, or mill cost instead of total book cost.

Total book cost.—The mill cost of cotton ties for the five-year period, 1902 to 1906, was $29.13 per ton, and the total book cost—adding to mill cost the additional costs of general and miscellaneous expense and depreciation—was $30.57 per ton, and ranged from $27.32 in 1905 to $36.50 in 1902.

It will be seen that the total book cost of cotton ties was less than the total cost of hoops and light bands, notwithstanding the fact that the cotton ties were much lighter than the ordinary sizes of hoops and light bands. This was because cotton ties required few changes in the operation of the mills which permitted a large output when the size of production is taken into consideration. Furthermore, the mills producing cotton ties were, for the most part, continuous mills which increase the capacity and reduce the labor cost.

The total book costs of cotton ties, as shown by the cost statement, are not net costs, as they include profits arising from the transfer of materials at prices above the actual cost of production, which profits accrued to the same companies or interests.

The above data taken from the report of the Commissioner of Corporations show that the average total book cost of producing cotton ties by the Carnegie Steel Co. during the five-year period, 1902 to 1906, was $30.57 per ton. The president of this company states that, owing to advances in wages, there has since been an increase of about a dollar a ton in the cost of producing cotton ties. The books costs, however, include intermediate profits, and the net costs are not shown.

A ton of 2,240 pounds of ties is equivalent to about 50 bundles of 30 ties each. Assuming that the advance in wages has absorbed the intermediate profits formerly included, and that $30.57 represents the net cost to-day, this would give as total net cost 61.14 cents a bundle. Although this latter is a rough approximation based on the book figures for a period several years back, it at least gives

some idea of the cost of manufacture to compare with selling prices that have been shown.

COMPARATIVE SALES AND PRICES.

The yearly sales, stock on hand January 1, and year prices f. o. b. mill of cotton ties as made by the Atlanta Steel Hoop Co., the Connors-Weyman Steel Co., and the Sharon Steel Hoop Co., competitors of the Carnegie, are as follows:

ATLANTA STEEL HOOP CO.

Years.	Bundles ties sold.	Av. price per bundle.	Carried over.
1906	376,474	$0.96	None.
1907	311,186	1.03	1,13
1908	301,010	.93	70,9
1909	249,842	.71	1,73
1910	270,109	.78	19,6
1911	385,759	.82	None.
1912	440,944	.75	4,7
1913[1]	197,119	.96	.....

[1] The figures for 1913 are inclusive of Aug. 31.

971

CONNORS-WEYMAN STEEL CO.

1908	.....	$0.958	.....
1909	.....	.742	.....
1910	.....	.841	.....
1911	135,002	.843	.....
1912	169,146	.885	1,8
1913[1]	160,000	.975	.....

[1] The figures for 1913 show sales up to the middle of September.

SHARON STEEL HOOP CO.[1]

Years.	Bundles of 45-pound ties sold.	Bundles of 60-pound ties sold.	Av. selling price per bundle f. o. b. Pittsburg.
1909	126,744	.....	$0.8
1910	102,000	.....	.7
1911	.....	6,400	.9
1911	115,769	.....	.7
1912	92,052	.....	.6
1913	None.	.....	.....

[1] This firm stated that it never carried over any ties from one season to the next and it had always been its custom to roll only enough for the season's orders.

WARREN, JONES & GRATZ PRICES.

The firm of Warren, Jones & Gratz gave the following list of prices at which it had been selling ties for the last seven years (the quotations are f. o. b. Pittsburgh):

Years.	Price per bundle.	Basis.	Years.	Price per bundle.	Basis.
Apr. 6, 1908	$0.81	May	May 27, 1912	$0.68	June.
May 9, 1909	.66	April	Aug. 28, 1912	.78	Do.
Apr. 24, 1911	.73	May	June 30, 1913	.80	July.
May 24, 1910	.77	June			

PRICES OF SECONDHAND TIES.

On account of the present shortage of new ties there is a greater demand than usual for secondhand ties this year (1913). Dealers who handle secondhand ties buy them from the cotton mills. They are run over a wheel to straighten them out, and those that have been cut are riveted together to make the required length. These are necessarily weaker than new ties. The whole ties are generally badly rusted, and the pieced ties are often very insecurely riveted together.

The usual prices paid cotton mills for secondhand ties by dealers f. o. b. mill have been as follows: 1910, three-eights cent per pound; 1911, one-half cent; 1912, three-eighths cent; and 1913, one-half cent.

The following are prices quoted per bundle by a large dealer in secondhand ties in the Southeast, freight not included:

	1910	1911	1912	1913
Whole ties	$0.75	$0.70	$0.70	$0.75
2-piece ties	.62	.60	.60	.65
3 or more piece ties	.50	.40	.40	.50

973 From another dealer the prices per bundle given below were secured:

	1910	1911	1912	1913
Whole ties	$0.63	$0.61	$0.66	$0.75-$0.96
Piece ties	.59	.57	.62	.70- .85

The latter dealer said, when he saw there was a great shortage in ties this year, he put his price of whole ties up to 96 cents per bundle and advanced the pieced ties in proportion. Dealers in the Southeast say that when there are plenty of new ties on the market the price of whole secondhand ties is usually 25 per cent below that made by Warren, Jones & Gratz on new ties, and pieced ties sell about 30 per cent lower than new ties.

COMPARATIVE PRICES ON NEW TIES, 1909–1913.

The following table furnishes a comparison of the prices quoted by the four firms manufacturing cotton ties and by Warren, Jones & Gratz:[1]

Years.	Carnegie Steel Co.	Atlanta Steel Hoop Co.	Connors-Weyman Steel Co.	Sharon Steel Hoop Co.	Warren, Jones & Gratz.
1909	$0.70	$0.71	$0.742	$0.65	$0.6
1910	.75	.78	.841	.73	.7
1911	.75	.82	.843	.73	.7
1912	.70	.75	.885	.67	.6
1913	.80	.96	.975	.....	.8

The comparison in the preceding table shows the Sharon Steel Hoop Co. quoting the lowest prices, while the highest prices shown are those of the Connors-Weyman Steel Co., of Birmingham, Ala. It will also be noted that the prices of the Atlanta Steel Hoop Co. are considerably higher than those of Warren, Jones & Gratz. Both the Atlantic Company and the Connors-Weyman Steel Co. are comparatively small concerns, and their cost of manufacture is undoubtedly considerably higher than that of the Carnegie Steel Co.

PRICES PAID BY MEMPHIS DEALER.

A large wholesale grocery company of Memphis, Tenn., has paid the following average prices for ties, on cars Memphis, in
975 the last four years; these ties were purchased of Warren, Jones & Gratz:

Years.	Price per bundle.	Years.	Price per bundle.
1910	$0.85 3-4	1912	[1] $0.80 3-4
1911	.85 3-4	1913	.93

[1] On Aug. 28, 1912, ties advanced 10 cents per bundle.

PRICES PAID IN NEW ORLEANS.

In New Orleans, La., a prominent dealer had paid the following prices for ties delivered in New Orleans:

[1] It will be noted that in the prices as furnished by the two concerns the quotations of Warren, Jones & Gratz, sole agents for the Carnegie Steel Co., are lower than the average yearly prices stated by the latter firm for the various years. In explanation of this fact, Warren, Jones & Gratz state: "The Carnegie Steel Co.'s prices are what might be called list prices, whereas our prices are net, after all trade discounts and special allow-
974 ances have been taken off, and represent the net prices paid by our customers. As for the variation in price during the year, our custom has always been to charge one-half cent per bundle per month higher than the base price. For instance, April 6, 1908, our price was 81 cents per bundle f. o. b. Pittsburgh, basis May. This would make our price in December, 1908, 84½ cents per bundle, or 3½ cents per bundle higher than the May price."

Years.	Price per bundle.	Years.	Price per bundle.
1907	$1.055	1911	$0.850
1908	.955	1912	.835
1909	.855	1913	[2] .965
1910	.740	1913	[1] 1.250

[1] Purchased from Warren, Jones & Gratz. [2] Purchased from a mill in the South.

The above figures are typical of prices paid generally by wholesale grocers, cottonseed-oil companies, and other large dealers in bagging and ties."

976 Mr. ROBERTS. I will make our objection that they are not material, and we can discuss that later.

(The letters referred to were marked by the stenographer "Exhibits H-1 to 16," and are as follows:)

(Letterhead of American Manufacturing Company, Brooklyn, New York City.)

[Copy.]

"JULY 7, 1916.

Mr. W. G. CLYDE,

Carnegie Steel Company, Pittsburgh, Penna.

DEAR MR. CLYDE: Enclosed find letter received to-day from the Ludlow Manufacturing Associates, and copy of my reply.

Apart from a few unpleasant words used by Mr. Wallace, he is doubtless justified in the way he looks at things.

In order to make ties go around as far as possible it is absolutely necessary to keep them out of the hands of speculators. A good many people have wanted to buy ties for the purpose of holding them for higher prices. These people we have declined to sell and have tried to limit our sales to merchants having a stock of bagging of the American Mfg. Co., Ludlow Company, or somebody else's; the idea being that people with bagging would be more apt to desire the ties to sell promptly.

977 So far we believe that we have done pretty well, and except for a lot of growling do not seem to have made any trouble.

Of the ties bought by the American Mfg. Co. 120,000 bundles have been actually sold in the Southeast, 130,000 bundles are held to cover current orders from Mr. Priddy (N. B. Co.), Mr. Sparks, and Charleston, 60,000 are for sale by P. P. Williams & Co. This office is making some sales right along. The rest of the 500,000 ties will be sold just as fast as Warren, Jones & Gratz find trade amongst people whom we think will promptly resell.

A good many ties are now being sold by Atlanta and Conners. Secondhand ties are being distributed in the Southeast.

I will be very much pleased to have you write me to St. Louis, Mo., Saturday, making any suggestions that you may care to make as to a better method of handling this business.

Please send the correspondence from Mr. Wallace along with your letter.

Yours, truly,

(Signed) ANDERSON GRATZ."

(Notarial certificate and seal on back.)

(Letterhead of American Manufacturing Company, Brooklyn, New York City.)

"AUGUST 1, 1916.

978 [Copy.]

Mr. WM. G. CLYDE,
Asst. Gen. Mgr. of Sales,
Carnegie Steel Co., Pittsburgh, Penna.

DEAR SIR: The prospects of the cotton crop are not so good, and whether the crop is to be large or small, it certainly is late.

Everybody seems to have some ties, and we no longer hear complaints from any source.

It now seems safe to do what we would have liked to have done before, and that is to offer spot ties broadcast throughout the cotton belt. I have, therefore, telephoned Warren, Jones & Gratz to quote ties to everybody from Norfolk west, August-September shipment. There will be some sales, no doubt, but I do not believe total purchases will amount to 25,000 bundles, which we will furnish from the American Manufacturing Company's spot stock.

Offering ties in this way will remove the last vestige of complaint, and will also encourage other holders of ties to sell.

We have sold a good many ties at $1.35 less 4 to the trade—some few at $1.35 flat. Where your ties have been billed to the American Manufacturing Company and then resold by the American Manufacturing Company without bagging at a profit, account will be made to Carnegie for that profit, as you will remember that I

979 told you the American Manufacturing Company's ties were being bought only for sale with bagging and would not be held for any profit where sold without bagging.

If the cotton crop really is short, it is quite possible that it may not be necessary to increase your manufacture in October beyond 1000,000 bundles, as first contemplated.

Yours, truly,

(Signed) ANDERSON GRATZ."

(Notatorial seal and certificate of correctness on back.)

AG. W.

(Letterhead of American Manufacturing Company, Brooklyn, New York City.)

"AUGUST 1, 1916.

Messrs. WARREN, JONES & GRATZ,
Rialto Building, St. Louis, Mo.

GENTLEMEN: Herewith copy of letter to Mr. Wm. G. Clyde on present cotton tie situation. Please note and be governed accordingly.

Ties sold without bagging for a profit must be at the risk of Warren, Jones & Gratz, and they must account to the Carnegie Steel Company for everything obtained, less our regular commission.

Yours, truly,

(Signed) ANDERSON GRATZ."

(Notatorial certificate, with seal, of correctness on back.)

AG:W.

Enc.

"[Copy.]

"AUGUST 9, 1916.

Mr. P. L. WOOSTER, *Pur. Agt.*,
Federal Sugar Refining Co.,
91 Wall Street, New York City.

DEAR SIR: Referring to telephone conversation.

Enclosed find Carnegie Steel Company's schedule of car load freight rates on cotton ties.

I quote you, for account of Warren, Jones & Gratz, St. Louis, 3,000 bundles at $1.35¾ net Pittsburgh, basis, August shipment. This price is made on the base of the opening market. $1.35 Pittsburgh, less 4¢ per bundle to buyers of 3,000 bundles, July shipment, plus ¾¢ per bundle for August. This price is open to you until noon, August 4.

Yours, truly,

VICE PRESIDENT."

AG. AF.

(Letterhead of Federal Sugar Refining Company, 91 Wall Street, New York.)

AUGUST 9, 1916.

AMERICAN MANUFACTURING CO.,
Noble & Wests Sts., Brooklyn, N. Y.

GENTLEMEN: Attention Mr. Anderson Gratz.

We beg to thank you for your letter of August 3rd, with offer on 3,000 bundles of ties. As the time you gave us for reply was so limited, we were unable to communicate with our correspondents.

Very truly, yours,

FEDERAL SUGAR REFINING COMPANY,
P. L. WOOSTER, *P. A.*"

PLW/CHG.

(Letterhead of American Manufacturing Company, Brooklyn, New York City.)

(Copy.)

"AUGUST 3, 1916.

Mr. WM. G. CLYDE,
Asst. Gen. Mgr. of Sales,
Carnegie Steel Company, Pittsburgh, Penna.

DEAR SIR: Referring to your letter of August 2nd to Messrs. Warren, Jones & Gratz:

I have called up Mr. P. L. Wooster, P. A., of the Federal Sugar Refining Co., and offered them 3,000 bundles of ties, which is all they talk about wanting.

I have also called up Messrs. Young & Metzner, from whom you recently had a letter and offered them 10,000

Enclosed find copies of letters written in confirmation to each of these concerns.

I doubt if either will buy any ties, but we are putting ourselves on record as offering them all they talk about wanting.

Yours, truly,

(Signed) ANDERSON GRATZ."

AGW.
Enc.
(Compared with original Jan. 14th, 1918. A. G.)
(Notarial certificate, with seal of correctness, on back.)

(Letterhead of Young & Metzner. Office: 321 to 379 Vernon Avenue, Long Island City, N. Y.)

"AUGUST 9TH, 1916.

AMERICAN MANUFACTURING CO.,
Noble St., Brooklyn, N. Y.

Attention Anderson Gratz, Esq.

DEAR SIR: We have your esteemed favor of 3rd inst., with thanks for your courtesy in the matter. We communicated with our buyers who were 'wailing' about ties. We have heard from them. You were correct in your statement that the ties offered would not be taken. Of course they claim cost plus freight is 5¢ higher than they now can buy, but we take this with a grain of salt. It is a relief to us
983 not to have to handle the tie question, and this shuts them off.

Yours, very truly,

YOUNG & METZNER."

	Cotton crop in bales (census figures).	Estimated covering, in yards.	"American" sales (yards).	Ties, estimated consumption.
1912	14,091,000	99,169,009	47,521,095, or 47 %	2,818,[illegible]
1913	14,614,000	102,270,000	47,389,905, " 46 %	2,922,[illegible]
1914	16,738,110	116,746,770	44,850,195, " 38 %	3,347,[illegible]
1915	12,912,447	83,744,129	46,782,160, " 56 %	2,402,[illegible]
1916	12,692,000	85,250,000	35,275,941, " 39 %	2,538,[illegible]
1917 (estimated)	12,250,000	85,750,000	38,266,620, " 43 %	2,450,[illegible]

(Letterhead of American Manufacturing Company, Brooklyn, New York City.)

"JANUARY 11, 1916.

Mr. C. N. WALLACE,
Pres. Ludlow Manufacturing Associates, Boston, Mass.

DEAR MR. WALLACE: Referring to your letter of December 31st.

Yesterday I was in Pittsburgh and had a conference with the officials of the Carnegie Steel Co.

Their net stock of ties on hand at present is about 330,000 bundles. They think they can make 500,000 bundles more by July 1st; they will try to add something to that. After the first of July their manufacture can not exceed 125,000 bundles per month, if even it is possible to make that number.

I understand that you have quite a lot of ties carried over, which should help you to begin the season. Under the circumstances, I think we are justified in asking you to moderate your demand for 150,000 bundles a little.

You can take this letter as giving you an option at our lowest opening price on 120,000 bundles of ties, open to you for one week after we make the price, whether that be in April or July.

It is not possible for the price to be low. To induce other manufacturers to make any ties so that the crop may be covered, it may be necessary to have quite a high price, but all that will have to be decided in the future.

The thing is that giving you this kind of an option on 120,000 bundles is giving you a larger offer on our prospective supply than has heretofore been the case.

If I am correct in thinking that you have between 50,000 and 75,000 bundles already on hand, you have an ample supply until October, before which time we certainly hope that we will be able to care for any additional quantity that you may require.

Yours, truly,

AG:W. (Signed) ANDERSON GRATZ."

(Notarial certificate, with seal, of correctness on back.)

(Letterhead of Ludlow Manufacturing Associates, 111 Devonshire Street, Boston, Massachusetts.)

[Personal.]

"JANUARY 13, 1916.

Mr. ANDERSON GRATZ,

Vice President, Brooklyn, New York.

DEAR Mr. GRATZ: Referring to the matter of cotton ties, I have your favor of the 11th instant, and note all you say with interest, particularly in regard to the small stock carried by your friends at Pittsburgh, and, as previously suggested, I suppose it is merely a matter of price, and the 150,000 to 200,000 bundles which we have hitherto been provided with is a very small percentage of the product which you represent.

I realize, and I know you do, that it is not for your interest, any more than for our own, that our friends should be deprived of the necessary amount of ties. Hitherto, we have handled, as you know, some 200,000 bundles of ties. True, we have a small amount carried over at Galveston. All these, however, as you know,

were submerged at the time of the tidal wave, and have been redipped. How many of them will be available the present season I do not know, but I am willing to take a chance if you will give me an option on 150,000 bundles as per your present communication.

You are quite in error as to the quantity in the aggregate which we carried over, and I know, after careful consideration, you will think my suggestion is—as it is meant to be—a fair and kindly one, and I assure you it is my desire to continue the very pleasant relations which have existed between us so long, at any rate, as the writer remains in business, and to that end he will industriously labor.

Quite likely the war may be over long before the tie situation is closed, in which case we may be swamped with the offerings.

The writer is, and has been, laid up here with a bronchial attack and does not feel like traveling, or he would run over to see you. He hopes, however, to have that pleasure later in the month.

Very truly, yours,

CNW:H. C. N. WALLACE."

(Copy.)

"JANUARY 14, 1916.

987 Mr. C. N. WALLACE,
Ludlow Manufacturing Associates,
111 Devonshire Street, Boston, Mass.

DEAR MR. WALLACE: Yours of January 13th received.

Ordinarily, it would suit us much better to give you an option on 150,000 bundles of ties than on 120,000 bundles or any smaller quantity.

You are entirely right in supposing that we are anxious that you should have from us all the ties your customers want. The question is to make deliveries to suit, and be sure that we have the ties.

I suggest that we give you an option on 120,000 bundles of ties for delivery as wanted, prior to August 1st, and that we give you an option on 30,000 bundles for September shipment from the mill, both these options to be exercised within one week after we notify you of the price.

I suggest that if this proposition suits you, you arrange, as soon as practicable, to have 100,000 to 120,000 bundles of ties taken care of at Galveston, under the same conditions as last year; then you will have them, which is a quite important matter.

I am very sorry, indeed, to know that you are laid up,
988 and hope the brisk weather now arriving will make you feel much better.

I will be very glad, indeed, to see you whenever it is practicable.

Yours, truly,

AG. W. (Signed) ANDERSON GRATZ.

Copy to Mr. W. G. Clyde, Carnegie Steel Co., Pittsburgh, Pa.
" " Warren, Jones & Gratz, St. Louis, Mo."

[Letterhead of American Manufacturing Company, Brooklyn, New York City.]

"JANUARY 19, 1916.

Mr. C. N. WALLACE,
Ludlow Manufacturing Associates,
111 Devonshire Street, Boston, Mass.

DEAR SIR: Your favor of January 18th received.

The trouble in the steel business is to get raw steel—however, we are going to have some ties.

You may consider this letter an option on 150,000 bundles, open to you for one week after we name a price. Ties to be ready for immediate shipment at that time.

989 If, in the meantime, you can arrange storage for these ties at Galveston, so much the better.

I suggest that it is quite probable that there may be trouble getting shipments from Pittsburgh through, and it will be well if you can ask the railroad company at Galveston to take care of the ties at the earliest possible date.

Allow me to say that if it had not been for your consistent preference given to us in this business, we most certainly never could have arranged with the Carnegie Steel Co. to give you this option.

Yours, truly,

AG:W. (Signed) ANDERSON GRATZ."

(Notarial certificate of correctness on back, with seal.)

[Incoming telegram.]

Day Message W. U., 6 N. Y. F. Y. 13—

BOSTON, MASS., *June 7, 1917.*

ANDERSON GRATZ:

Your telegram just received is very satisfactory and we thank you for same.

LUDLOW MFG. ASSOCIATION.

4.08 p. m.

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990 [" Copy.]

LUDLOW MANUFACTURING ASSOCIATES,
111 DEVONSHIRE ST.,
Boston, Mass., June 7, 1917.

Mr. ANDERSON GRATZ,
Noble & West Streets, Brooklyn, New York.

DEAR SIR: We have at 3 p. m. your day message reading as follows: "Warren, Jones & Gratz advise they can furnish you fifty thousand bundles ties shipment from mill during month October about proportionate amount each week," and this is very gratifying to us, as

it will enable us to relieve pressure at certain points, with which you are acquainted.

We assume, not having been advised of any change in price, that these will be at the opening, plus the usual carrying charge, and of course subject to the usual allowances.

We thank you kindly for your efforts in this matter. We presume in due course we will receive confirmation from Saint Louis with formal contract, if you so desire, and that you may know we have received your communication, we will wire you at once by day message as follows:

991 "Your telegram just received is very satisfactory and we thank you for same."

Yours, very truly,

LUDLOW MANUFACTURING ASSOCIATES,
(Signed) HENRY V. GREENOUGH,
Selling Agent.

H. C.:

"Original sent to Warren, Jones & Gratz as per Mr. Anderson Gratz' instructions."

["Copy.]

JUNE 29, 1916.

Mr. C. N. WALLACE,
Ludlow Manufacturing Associates,
111 Devonshire Street, Boston, Mass.

DEAR SIR: Your two favors of June 28th received.

Things are working more smoothly now, but the supply of ties is still very scant.

Messrs. Warren, Jones & Gratz are having to take back from the American Company the ties they have sold so as to be able to give them to other people.

992 Please be sure that your ties are freely offered with your goods, because we have not enough ties to steady the market unless all of the people who have bought from us offer their purchases for sale quite promptly.

Yours, truly,

(Signed) ANDERSON GRATZ."

A. G. W.

[Letterhead of American Manufacturing Company, Brooklyn, New York City.]

"JULY 7, 1916.

Mr. C. N. WALLACE,
Ludlow Manufacturing Associates,
111 Devonshire Street, Boston, Mass.

DEAR SIR: Your letter of July 6th received.

You are under some misapprehension. I have never controlled the number of ties to be made nor the price. My advice has usually

been taken as to the number of ties manufactured, and has sometimes been taken as to the price—not always.

This year I told the Carnegie Steel Co. that it was necessary to have 1,000,000 bundles of ties by the first of July, based on their competitors making about so many. Now, either the competitors have not made that many or they are not willing to sell them freely, and the demand thrown on us has been more than we can supply.

993 Amongst the earliest sales made by the Carnegie Steel Co. were 200,000 bundles to the Ludlow Mfg. Co. and 500,000 bundles scattered over until November. Beginning July 1st with 1,000,000 bundles, we have counted on the Carnegie Co. supplying us a total of 1,400,000 bundles. Including the 700,000 bundles mentioned above, Warren, Jones & Gratz have sold 1,330,000 bundles—just how it would be possible for them to continue selling to anybody I do not know.

The American Manufacturing Co. is continuing to supply ties out of the 500,000 bundles they have bought, and have so far obligated about 350,000 bundles. That leaves 150,000 bundles for sale to November, and naturally that 150,000 bundles to bring bagging business.

Messrs. Warren, Jones & Gratz as the selling agents for the American Mfg. Co. can not be allowed to sell those ties except along with their bagging. If we can get any more from the Carnegie people, they will be for sale first to the people who have bought the other 1,300,000 bundles, and then to the trade in general.

The Ludlow Company have been much better protected in this matter than the American Manufacturing Co. You have a provision of 335,000 bundles, while the total ties on which the American Company had any claim were 530,000 bundles. If anybody

994 suffers in the whole operation, it will be the American Company.

To gain an advantage on our competitors and guard ourselves from disaster, we should have taken the Carnegie Co.'s whole 1,400,000 bundles, and would have been glad to do so except for the broader policy protecting the Carnegie Co.'s trade by giving ties to everyone who had been their customers in years past.

I am expecting to hear to-day as to additional supplies of ties, but fear that there will be very few possible for us to get.

This is one year when the Carnegie Steel Co. can well afford investigation. They have sacrificed their other business and large profits to make their usual quantity of ties—have sold those ties to their usual customers at a moderate price, even while others were getting from 10¢ to 25¢ per bundle more, and now even you are disposed to criticize them because they have not made 50% more ties than they have usually made, and sold them to people who have not usually been their customers.

Yours, truly,

AG:W. (Signed) ANDERSON GRATZ."

(Notary's certificate and seal of correctness appears on back of the foregoing.)

995 Mr. MAGNER. These also [producing papers] were offered in evidence. Do you remember those?

Mr. THOM. Yes.

(The papers referred to were marked by the reporter "Exhibits A–1 to A–6," and are as follows:)

"Cotton and Cotton Oil News. Carolina Bagging Company, Henderson, N. C. (Picture of factory buildings.) Buildings cover 10 acres. Manufacturers and importers.

Jute bagging, cotton ties, rerolled jute bagging, and sugar bag cloth. Also manufacturers' agents New Arrow ties. Eureka brand jute bagging has stood the test of time. Carolina Bagging Co., Henderson, N. C."

(Letterhead of Mente & Company, burlaps & bags, New Orleans, U. S. A.)

"APRIL 24, 1916.

DEAR SIRS: Sugar bag cloth and ties.

996 We offer star brand (about 1¾ lb.) sugar bag cloth at 9¾¢ per yd.

S/H 11½ foot spliced ties at 90¢ per bundle, both net fob Charleston or Savannah for May/June shipment.

There is every sign of a great shortage of bagging and ties this season and we confidentially expect the regular bagging market will open at a very high price. New ties are to-day unobtainable and we believe they will sell later on from $1.25 to $1.40 per bdl.

The S/H ties we are offering are the best ever put on the market. We have equipped a factory especially to turn out a high grade tie and our production being limited and largely sold, we are only able to sell these ties with the equivalent yardage of sugar bag cloth.

We strongly advise you to book your requirements immediately.

Kindly wire at our expense the quantity you would be interested in and if you desire we will telegraph freight paid prices.

Yours, very truly,

MENTE & COMPANY."

FMT:F.

(Letterhead of Early-Foster Company, Inc.)

997

"WACO, TEXAS, *July 13, 1916.*

BLAIR, HUGHES CO.,

Dallas, Texas.

GENTLEMEN: Special price not over 10 cars 2 lb. Texas grade bagging with new ties $1.00 per pattern, delivered Texas common

points, with only ½¢ per pattern, carrying charge per month to Sept. 15th. Wire or phone us if interested.

Better take on a few cars of this, as the price is guaranteed against the manufacturers' decline.

Yours, very respectfully,

EARLY-FOSTER CO."

(Letterhead of M. M. Graves Company, brokers and commission merchants, Houston, Texas.)

"JULY (19) 31, 1916.

(In red:) Bagging and ties, attractive discount on immediate shipment.

Subject to our confirmation of your immediate acceptance, our quotations on mixed car load lots c. a. f.; that is freight paid Texas common points basis present freight rates, are as follows:

998 (Mixed car load lots.)	Per yard (without ties).	Per pattern (with 6 ties).
Registered Brand 'sugar' bag cloth 3 yd. strips	10½¢	.96
2 lb. Alliance sugar bag cloth " " "	12½¢	$1.05
2 lb. American 'Texas' bagging 60 yds. rolls	12¢	1.03
2 " " 'American' " 60 " "	12½¢	1.06
2½ " " 'Crescent' " 60 " "	14¢	1.15
2¼ " " 'Oak' " 60 " "	13½¢	1.12

New standard steel Arrow ties (sold with bagging), $1.57½ per bdl. Quotations upon request on straight cars new ties.

The bagging is offered for use in the United States only and must not be exported except on cotton bales.

(In red:) Basis: August shipment, and subject to an advance of three-fourths cent per pattern per month thereafter for deferred deliveries. Discount: On orders calling for immediate shipment, we are allowing a discount of one cent per pattern, except on 'American' brand.

Your attention is particularly invited to our excellent quality registered brand 'Sugar' sugar bag cloth, weighing about 1¾ per yard, which we are offering at very attractive prices. We also have a 2# sugar bag cloth, the 'Aliance' brand, as quoted above.

999 These two brands of sugar bag cloth have been standard and representative of the best quality since sugar bag cloth was introduced some thirty years ago. You can make no mistake in buying the same.

Should a cotton crop in proportion to that promised by present conditions be realized, we look for a great scarcity of bagging, and especially of ties, during the height of the shipping season, and now with threatened railway strikes, we cannot too strongly urge upon

you the advisability of ordering out and taking prompt shipment of all of the bagging and ties you will require during the season. Immediately upon a scarcity of bagging and ties developing, the situation may become critical, with radical market advances.

We are prepared to render a prompt, careful, and efficient service and would heartily appreciate any preference that you may show us.

Yours, truly,

M. M. GRAVES COMPANY, Inc.

MMG/AL.

Quality goods—efficient service—reliability."

(Letterhead of M. M. Graves Company, Houston, Texas.)

"AUGUST 18 (30), 1916.

(In red:) Order out your bagging before the strike.

1000 The manufacturers write us under date of August 14th—'The news from the East on the strike situation is not as favorable as it was last week. We think it would be prudent on the part of everybody to have their goods, which will surely be needed, shipped while shipping is possible.'

Subject to our confirmation of your immediate acceptance, our quotations on mixed car load lots caf; that is, freight paid Texas common points basis present freight rates, are as follows:

(Mixed car load lots.)	Per yard (without ties).	Per pattern (with 6 ties).
Registered brand 'Saxet' bag cloth 3 yd. strips	10½¢	.92
Registered brand 'Sugar' " " 3 " "	10½¢	.90
2 lb. Alliance sugar bag cloth " " "	12¢	$1.03
2 lb. new 'Texas' bagging 60 yd. rolls	11½¢	1.01
2 " " 'American' " 60 " "	12½¢	1.05
2 " stained 'American' " 60 " "	11½¢	1.01
2½ lb. stained 'Crescent' bagging 60 yd. rolls	12½¢	1.08
2½ " new 'Crescent' " 60 " "	13½¢	1.10
2½ " " 'Oak' " 60 " "	13¢	1.10

New standard Arrow ties, $1.57 per bdl.

The bagging is offered for use in the United States only and must not be exported except on cotton bales.

1001 (In red:) Discount: Where orders call for immediate shipment, we are allowing a discount of one cent per pattern from above prices.

Your attention is particularly invited to our registered brand 'Saxet' sugar bag cloth, weighing about 1¾# per yard. We are using this brand exclusively on the very best quality of selected

sugar bag cloth, which we have had put up especially for our trade as a covering for cotton, it literally sacks it

There is as much difference in the quality of sugar bag cloth as there is in the various brands of regular bagging. Do not merely buy sugar bag cloth, but insist on the best, which you can rely on getting in our standard, selected, registered brands 'Saxet' and 'Sugar,' or 2# 'Alliance.'

We are offering new ties only, and believe you would make a serious mistake in using second-hand ties.

Yours, truly,

M. M. GRAVES COMPANY, INC.

Quality goods—efficient service—reliability."
MMG/AL.

["Copy.]

Avoid strike delays—Order immediate shipment.

1002 On account of a threatened general railway strike, better order out your bagging and ties. With bagging and ties available, gins can continue running whether the cotton can be shipped or not.

Subject to confirmation of your wire acceptance, and for immediate shipment, we can quote mixed carload lots, caf (freight paid), Texas common points:

New 'Texas' brand bagging, $1.00 per pattern.
New 'American' brand bagging, $1.04½ per pattern.
Storm-stained 'American' brand bagging $.99 per pattern.
Registered 'sugar' bagging, $.91 per pattern.

All including new steel Arrow ties to match: We are offering new ties only and believe you would make a serious mistake in using second-hand ties.

Houston, Texas, August 12, 1916.

Yours truly,

M. M. GRAVES COMPANY, INC."

1003 Mr. MAGNER. Here are the letters we read at the other hearing, but I have made full copies of them. You will remember Mr. Gratz testified he had the letters from Young & Metzner, from Wallace, the Federal Sugar Company, and from Wooster. These have all been introduced in evidence, but I did not leave the letters.

Mr. ROBERTS. These letters seem to be signed, the most of them, by Anderson Gratz.

Mr. MAGNER. They are letters to and from Mr. Gratz and Wallace, one answers the other, all on the question of the ties.

Mr. ROBERTS. If the court please, Mr. Wallace, vice president, and an official of Ludlow, has never been on the stand, and correspondence, letters written by Mr. Gratz himself, he being one of the de-

fendants in the case, to people about matters of this kind, it seems to me would not be admissible.

Mr. MAGNER. There are already in evidence, judge. They were accepted at the last hearing, and the record shows that, but I did not leave them with the Commission at that ime.

The EXAMINER. There was a good deal of slipshod business in that last hearing, and the letters were thrown all around.

Mr. ROBERTS. We never had any opportunity to see those
1004 letters.

Mr. MAGNERR. If you want Mr. Gratz and Mr. Wallace here to swear to them we will bring them on.

Mr. THOM. If they have already been introduced and we made no objection at that time they ought to go in.

Mr. ROBERTS. We can move to rule them out at this time so far as that is concerned.

Mr. THOM. Suppose they go in in this shape, that you introduce them, and we reserve the right to object after going over them?

Mr. MAGNER. That is all right. Then I can bring Wallace on. I was going to bring him, but I got word he was very sick.

Mr. ROBERTS. You just want Wallace to show, as I understand, that these are the letters or copies of the letters?

Mr. MAGNER. That is all.

Mr. ROBERTS. We will not make any point about that.

Mr. THOM. We are not making any question as to the authenticity of the letters, but to their materiality.

Mr. MAGNER. As to that I am perfectly satisfied they are very relevant. The only question you can raise is the competency of them.

Mr. THOM. We do not question their authenticity.

1005 Mr. MAGNER. That is our case. We rest.

Mr. ROBERTS. We are not prepared to say just at this time whether we will introduce anything in rebuttal or not. Mr. Thom and I have not had any opportunity to confer about it, but we will know very soon.

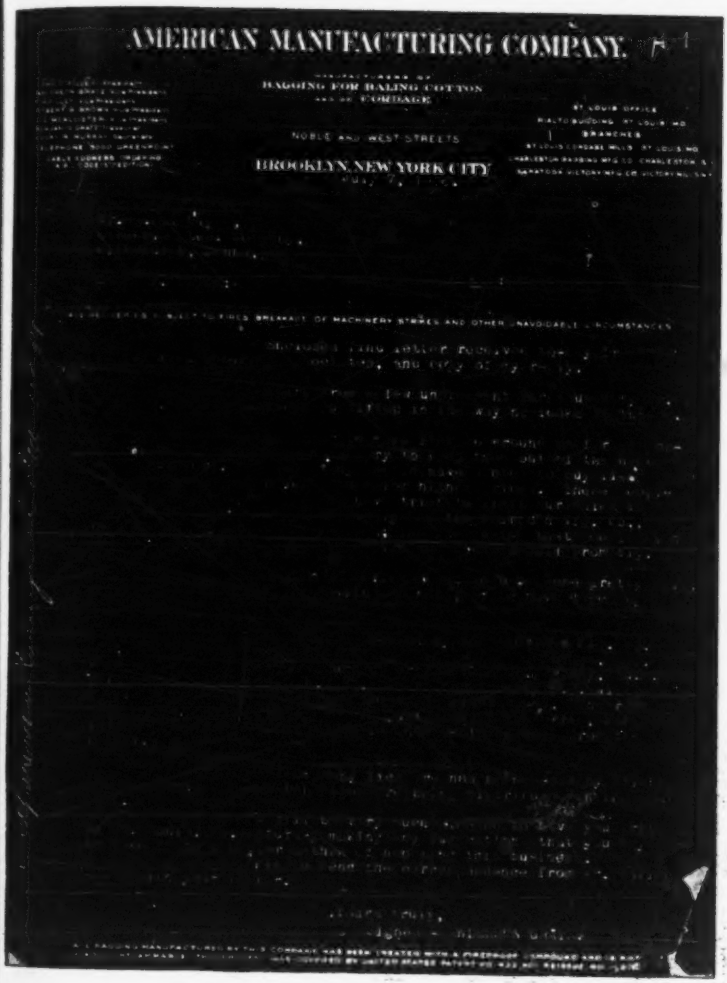
Mr. MAGNER. That is satisfactory to me. You gentlemen, I hope, will give me a little time.

Mr. ROBERTS. Yes.

(Whereupon, at 11 o'clock a. m., the hearing was adjourned subject to the call of the Commission.)

1006 Federal Trade Commission, Docket No. 12.

Section IX.—Exhibits: This section is not mentioned in the original certification.

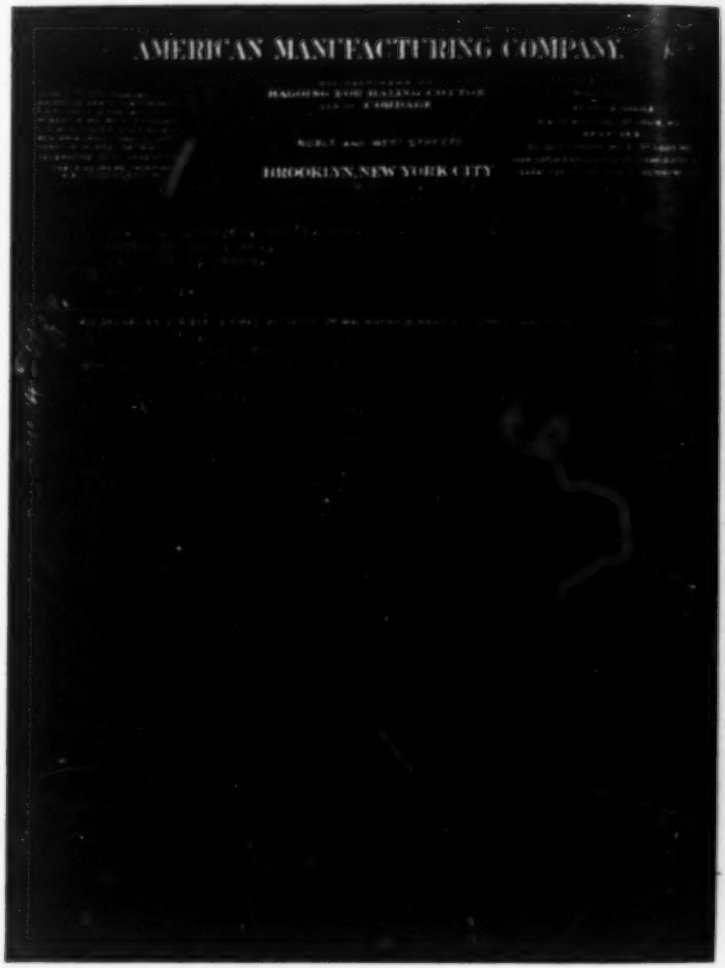

AMERICAN MANUFACTURING COMPANY.

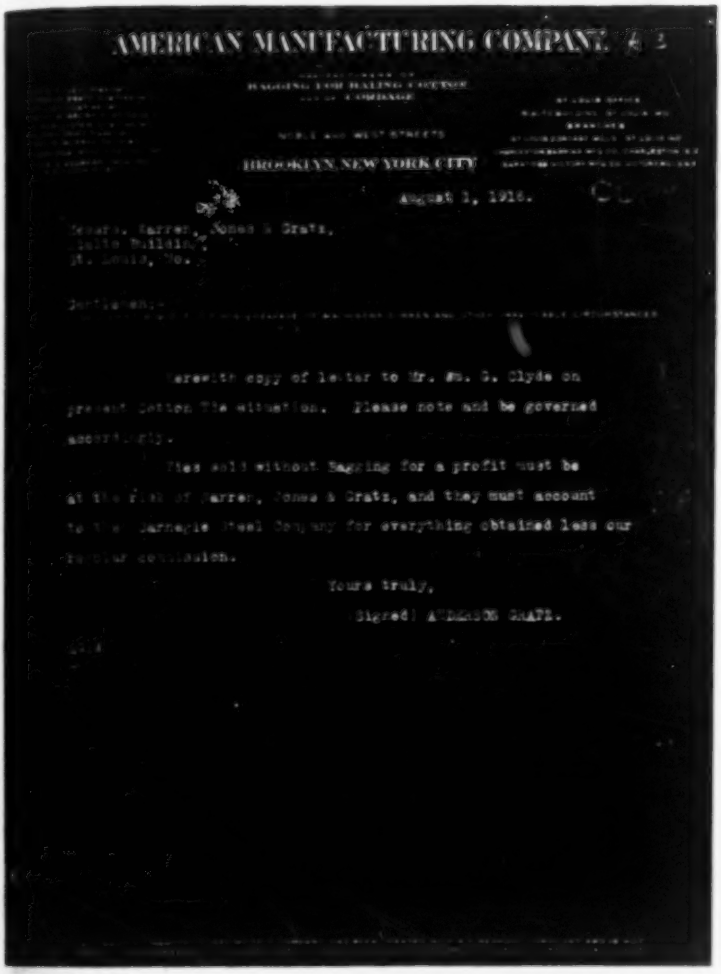
BAGGING FOR BALING COTTON

AND COTTAGE

NOBLE AND WEST STREETS

BROOKLYN, NEW YORK CITY


AMERICAN MANUFACTURING COMPANY
BROOKLYN, NEW YORK CITY



AMERICAN MANUFACTURING COMPANY.

BROOKLYN, NEW YORK CITY

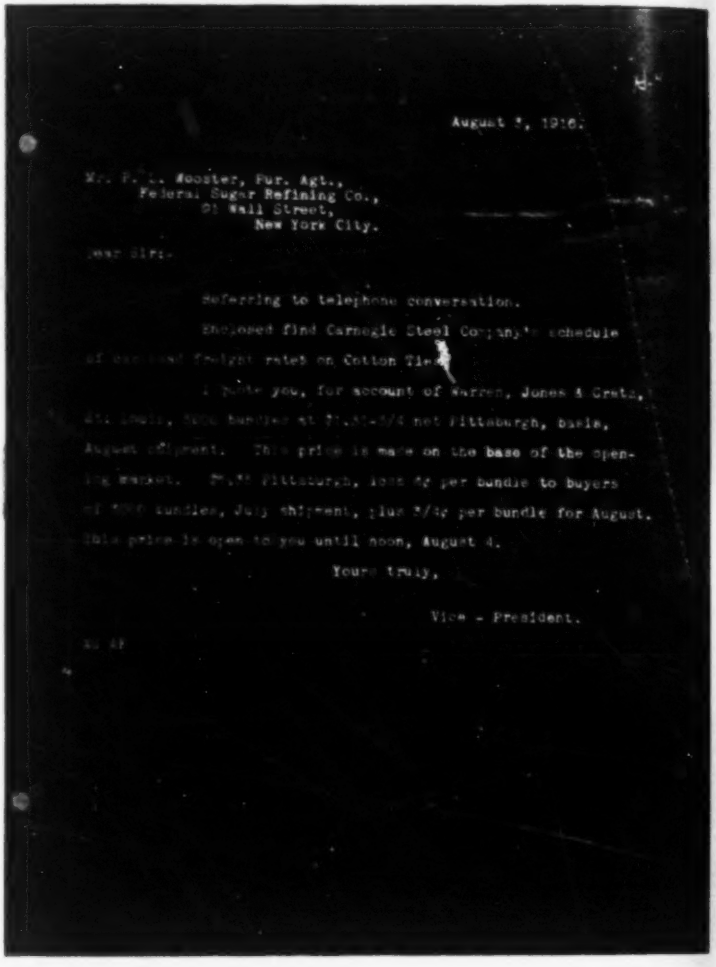
August 1, 1916.

Herewith copy of letter to Mr. Wm. G. Clyde on present cotton situation. Please note and be governed accordingly.

Ties sold without Bagging for a profit must be at the rate of Warren, Jones & Gratz, and they must account to the Carnegie Steel Company for everything obtained less our regular commission.

Yours truly,

(Signed) AMERICAN MFG.



August 7, 1916.

W. P. L. Booster, Pur. Agt.,
Federal Sugar Refining Co.,
61 Wall Street,
New York City.

Dear Sirs:-

Referring to telephone conversation.

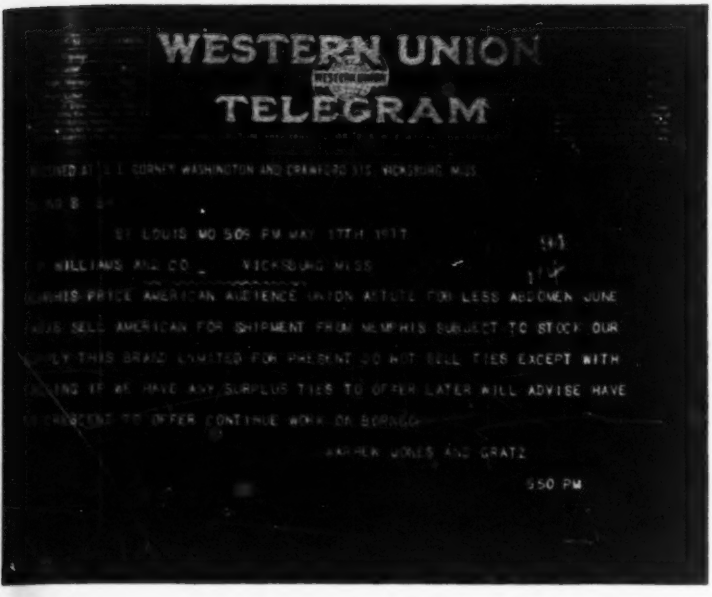
Enclosed find Carnegie Steel Co.'s schedule of [illegible] freight rates on Cotton Ties.

I quote you, for account of Warren, Jones & Gratz, St. Louis, [illegible] bundles at $1.[illegible]/2 net Pittsburgh, basis, August shipment. This price is made on the base of the opening market. [illegible] Pittsburgh, [illegible] per bundle to buyers of [illegible] bundles, July shipment, plus 1/2 per bundle for August. This price is open to you until noon, August 4.

Yours truly,

Vice - President.

EJ GF



WESTERN UNION

TELEGRAM

ST LOUIS MO 505 PM MAY 17TH 1917

WILLIAMS AND CO VICKSBURG MISS

PRICE AMERICAN AUDIENCE UNION ATTUTE FOR LESS ABDOMEN JUNE

SELL AMERICAN FOR SHIPMENT FROM MEMPHIS SUBJECT TO STOCK OUR

THIS BRAID LIMITED FOR PRESENT DO NOT SELL TIES EXCEPT WITH

IF WE HAVE ANY SURPLUS TIES TO OFFER LATER WILL ADVISE HAVE

TO OFFER CONTINUE WORK OR BORROW

WARREN JONES AND GRATZ

550 PM

COMMERCIAL CABLES

TELEGRAM

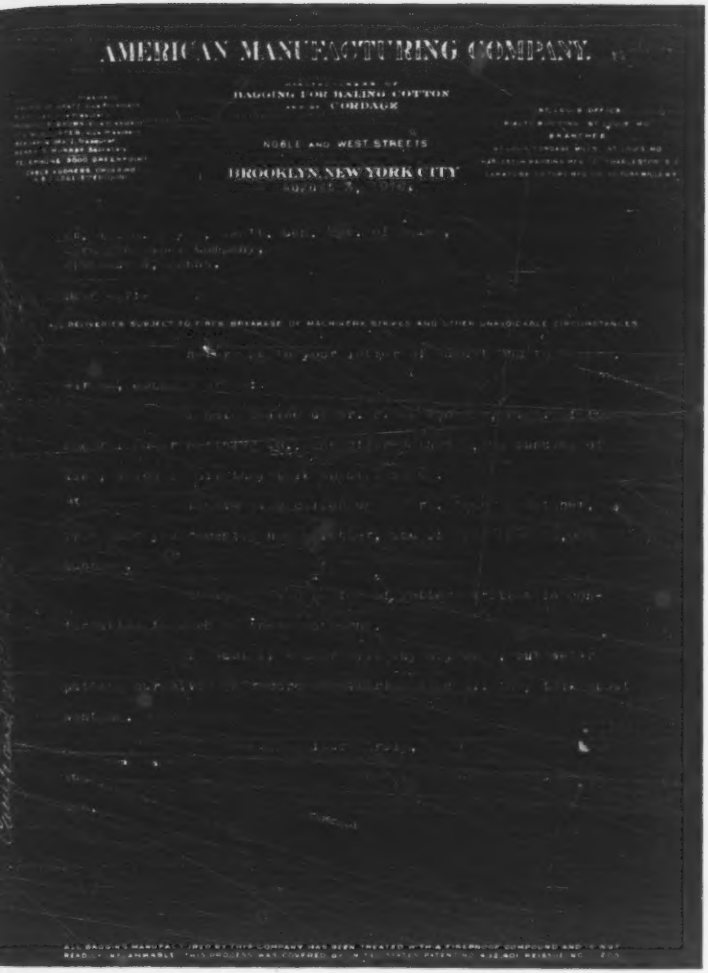
St Louis Mo May 24-17

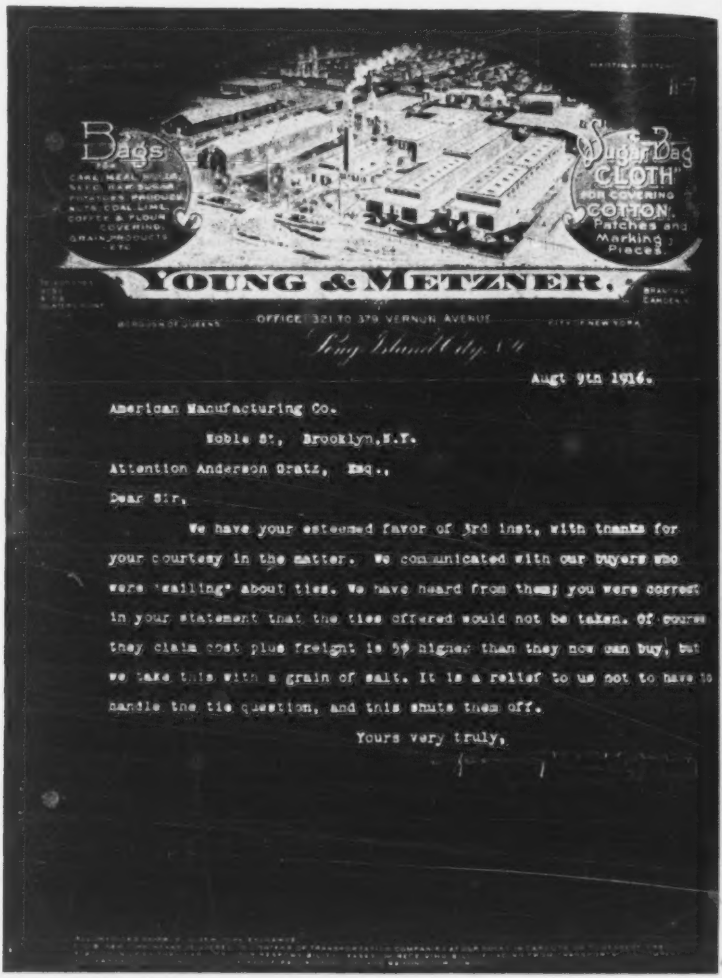
Vicksburg Miss

sell any ties now enroute are using every effort to

to take care our contracts

Warren Jones & Gratz


AMERICAN MANUFACTURING COMPANY.
BAGGING FOR BALING COTTON
CORDAGE
NOBLE AND WEST STREETS
BROOKLYN, NEW YORK CITY



Augt 9th 1916.

American Manufacturing Co.

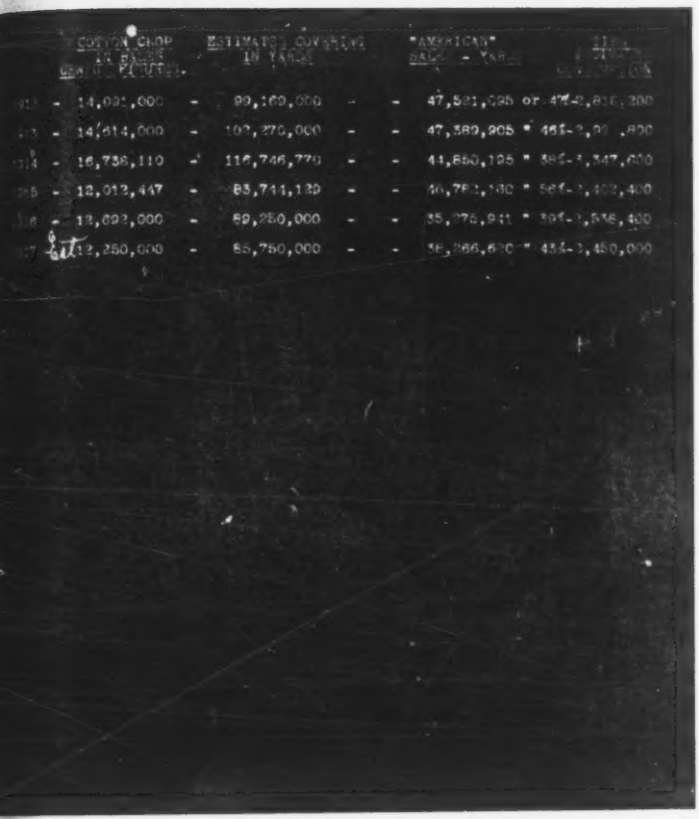
Noble St, Brooklyn,N.Y.

Attention Anderson Gratz, Esq.,

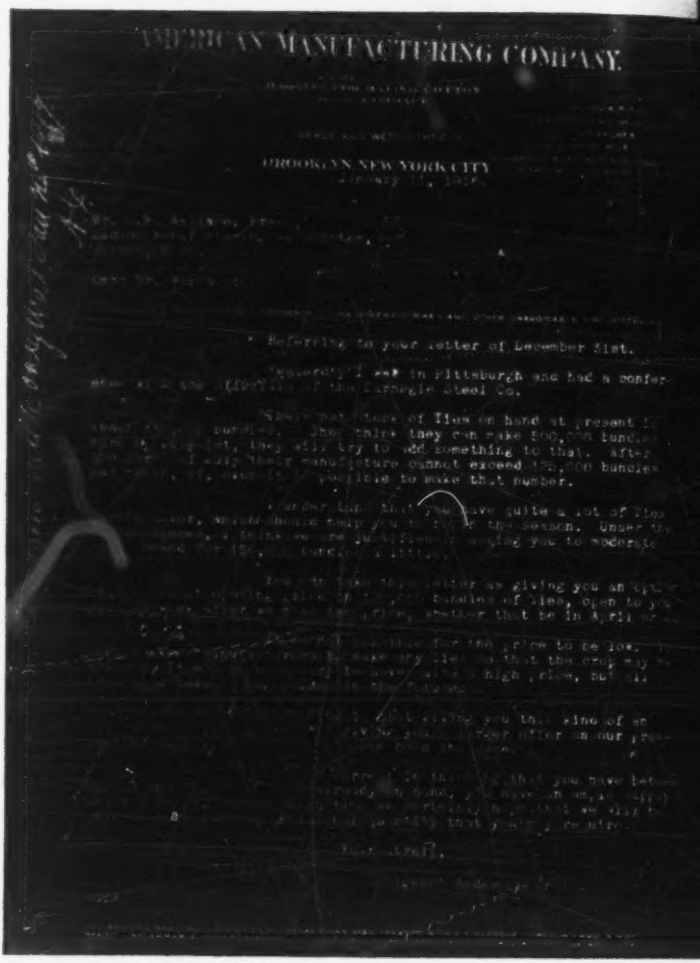
Dear Sir,

We have your esteemed favor of 3rd inst, with thanks for your courtesy in the matter. We communicated with our buyers who were "sailing" about ties. We have heard from them; you were correct in your statement that the ties offered would not be taken. Of course they claim cost plus freight is 5¢ higher than they now can buy, but we take this with a grain of salt. It is a relief to us not to have to handle the tie question, and this shuts them off.

Yours very truly,



	COTTON CROP AS BASIS OF PRODUCTION.		ESTIMATED COVERAGE IN YARDS		"AMERICAN" BALES - YARDS	
[illegible]	14,0[illegible],000	-	89,160,000	- -	47,581,095 or 47[illegible]	
[illegible]	14,614,000	-	102,270,000	- -	47,389,905 " 461-[illegible]	
[illegible]	16,736,110	-	116,746,770	- -	44,860,198 " 386-[illegible]	
[illegible]	12,012,447	-	83,741,129	- -	40,783,180 " 564-[illegible]	
[illegible]	13,697,000	-	89,250,000	- -	35,[illegible]78,841 " 394-[illegible]	
[illegible]	12,250,000	-	85,750,000	- -	38,[illegible]66,600 " 434-[illegible]	



AMERICAN MANUFACTURING COMPANY

BROOKLYN NEW YORK CITY

Referring to your letter of December 21st.

Sudbow Manufacturing Associates

Boston, Massachusetts January 13, 1916

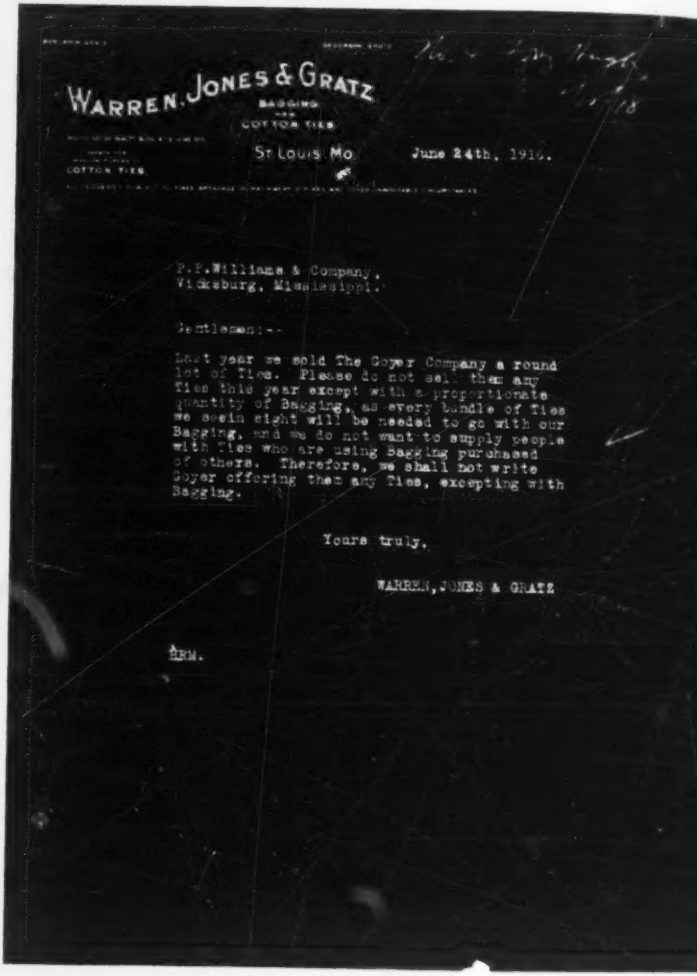
Personal

Mr. Anderson Gratz, Vice President.
Brooklyn, New York.

Dear Mr. Gratz:-

Referring to the matter of Cotton Ties, I have your favor of the 11th instant, and note all you say with interest, particularly in regard to the small stock carried by your friends at Pittsburgh, and, as previously suggested, I suppose it is merely a matter of price, and the 150,000 to 200,000 bundles which we have hitherto been provided with is a very small percentage of the product which you represent.

I realize, and I know you do, that it is not for your interest, any more than for our own, that our friends should be deprived of the necessary amount of ties. Hitherto, we have handled, as you know, some 500,000 bundles of ties. True, we have a small amount carried over at Galveston. All these, however, as you know, were submerged at the time of the tidal wave, and have been redipped. How many of them will be available the present season I do not know, but I am willing to take a chance if you will give me an option on 150,000 bundles as per your present communication.



WARREN, JONES & GRATZ
BAGGING
AND
COTTON TIES

St Louis Mo June 24th, 1916.

P.P.Williams & Company,
Vicksburg, Mississippi.

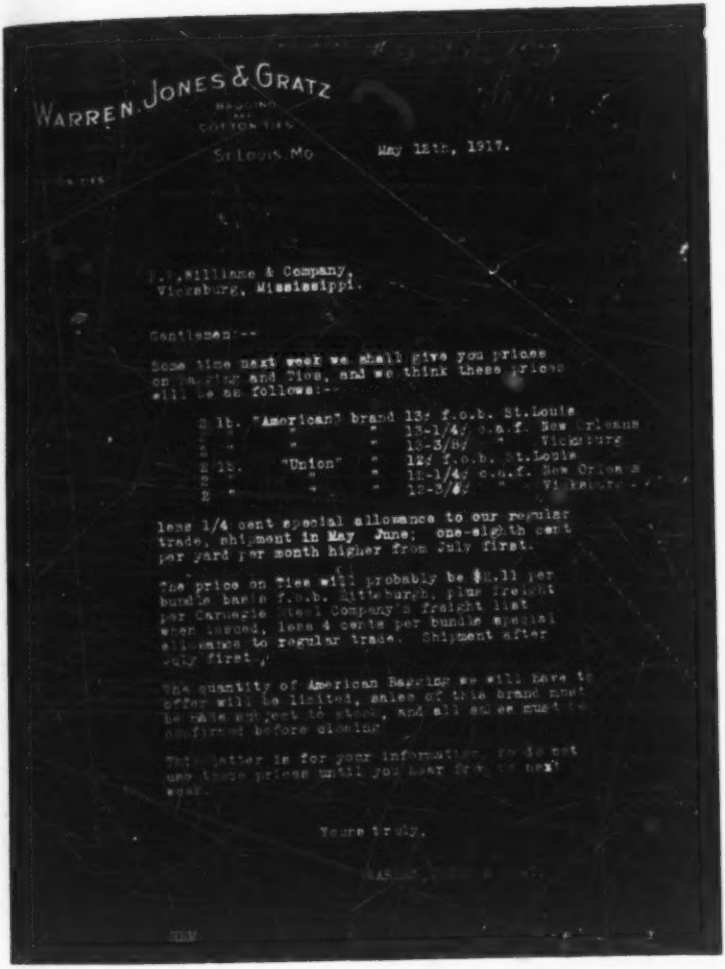
Gentlemen:-

Last year we sold The Coyer Company a round lot of Ties. Please do not sell them any Ties this year except with a proportionate quantity of Bagging, as every bundle of ties we sell in sight will be needed to go with our Bagging, and we do not want to supply people with Ties who are using Bagging purchased of others. Therefore, we shall not write Coyer offering them any Ties, except with Bagging.

Yours truly,

WARREN, JONES & GRATZ

HHM.



WARREN-JONES & GRATZ

COTTON TIES

St Louis Mo May 11th, 1917.

J.J.Williams & Company,
Vicksburg, Mississippi.

Gentlemen:--

Some time next week we shall give you prices on Bagging and Ties, and we think these prices will be as follows:--

2 lb. "American" brand 13¢ f.o.b. St.Louis
2 " " " 13-1/4¢ c.a.f. New Orleans
2 " " " 13-3/8¢ " Vicksburg
2 lb. "Union" " 12¢ f.o.b. St.Louis
2 " " " 12-1/4¢ c.a.f. New Orleans
2 " " " 12-3/8¢ " Vicksburg

less 1/4 cent special allowance to our regular trade, shipment in May June; one-eighth cent per yard per month higher from July first.

The price on Ties will probably be $3.11 per bundle basis f.o.b. Pittsburgh, plus freight per Carnegie Steel Company's freight list when issued, less 4 cents per bundle special allowance to regular trade. Shipment after July first.

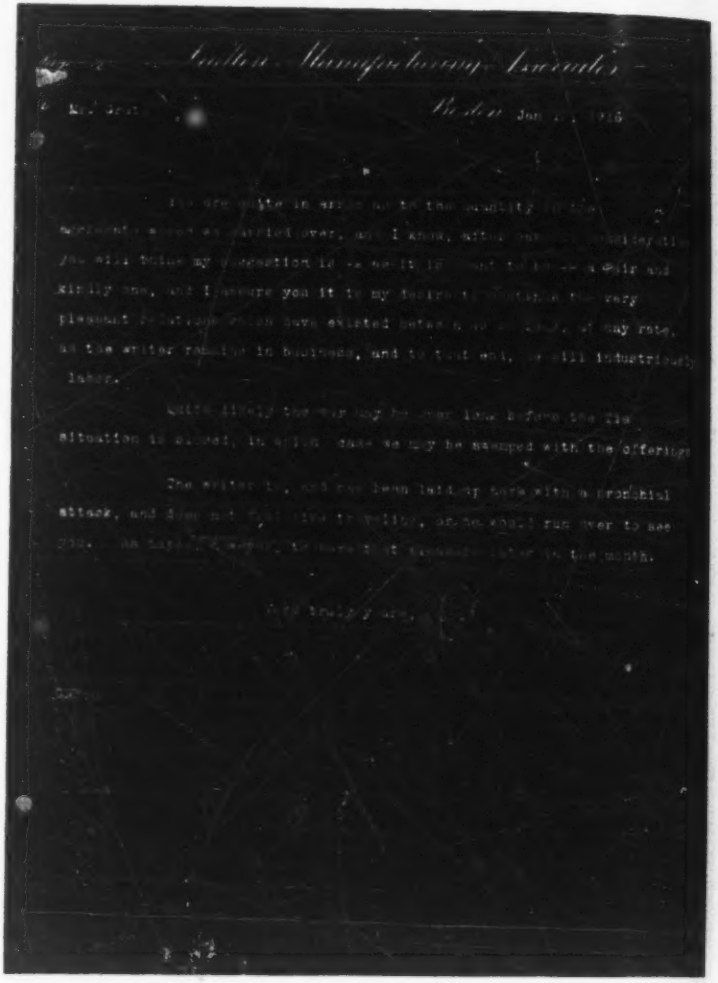
The quantity of American Bagging we will have to offer will be limited, sales of this brand must be made subject to stock, and all sales must be confirmed before closing.

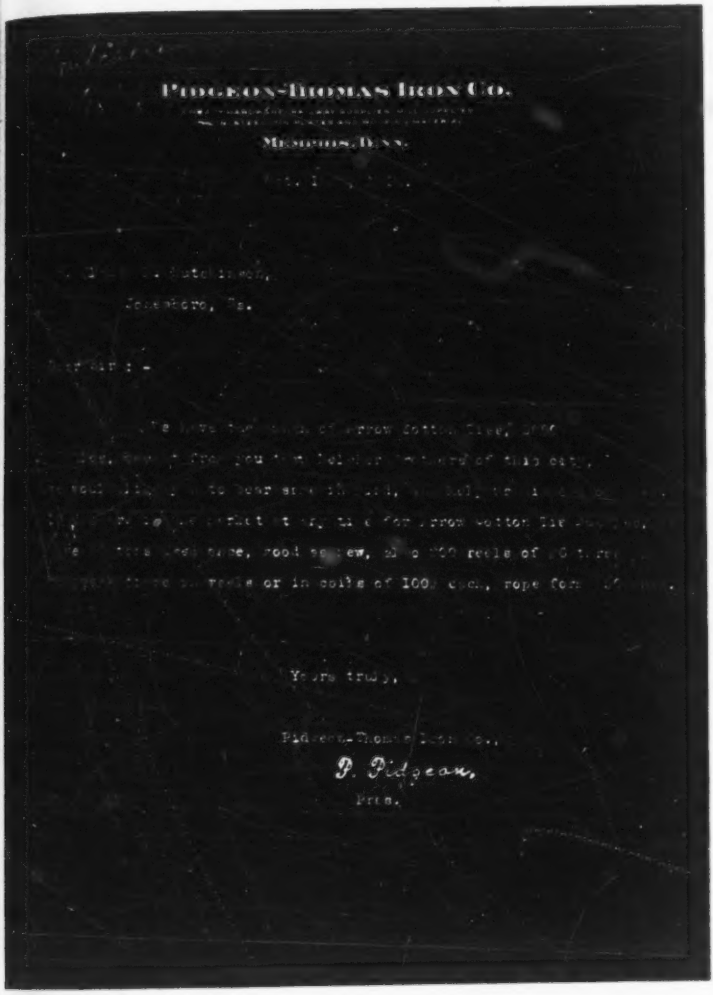
This letter is for your information, so do not use these prices until you hear from us next week.

Yours truly,

WARREN-JONES & GRATZ

HBW





PIDGEON-THOMAS IRON CO.

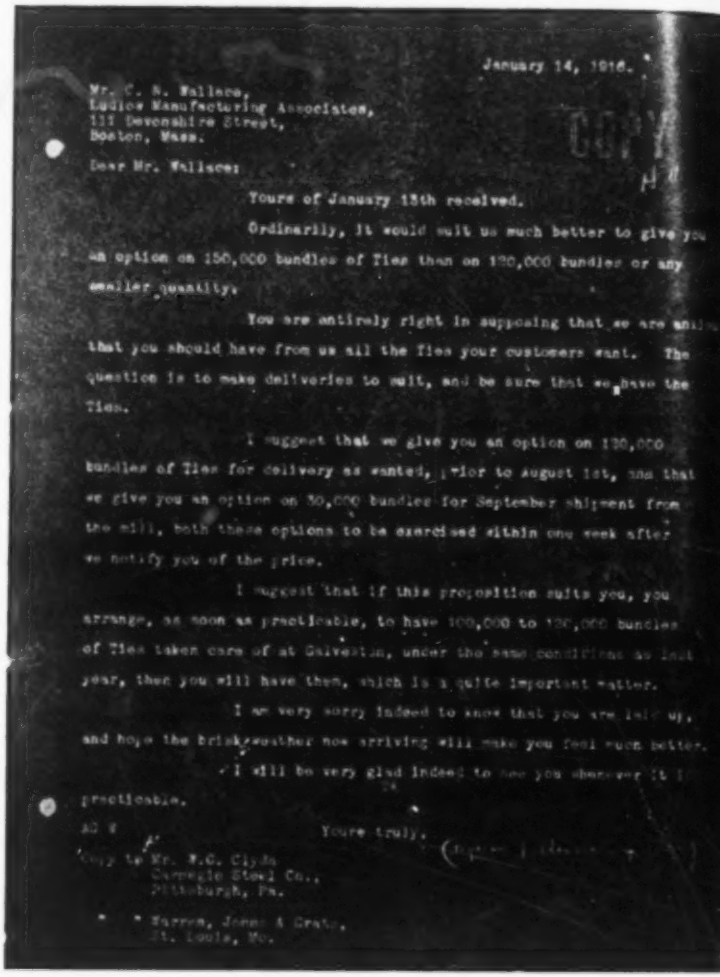
Memphis, Tenn.

Yours truly,

Pidgeon-Thomas Iron Co.,

D. Pidgeon,

Pres.



January 14, 1916.

Mr. C. S. Wallace,
Ladies Manufacturing Associates,
111 Devonshire Street,
Boston, Mass.

Dear Mr. Wallace:

Yours of January 13th received.

Ordinarily, it would suit us much better to give you an option on 150,000 bundles of Ties than on 100,000 bundles or any smaller quantity.

You are entirely right in supposing that we are anxious that you should have from us all the Ties your customers want. The question is to make deliveries to suit, and be sure that we have the Ties.

I suggest that we give you an option on 100,000 bundles of Ties for delivery as wanted, prior to August 1st, and that we give you an option on 50,000 bundles for September shipment from the mill, both these options to be exercised within one week after we notify you of the price.

I suggest that if this proposition suits you, you arrange, as soon as practicable, to have 100,000 to 150,000 bundles of Ties taken care of at Galveston, under the same conditions as last year, then you will have them, which is a quite important matter.

I am very sorry indeed to know that you are laid up, and hope the brisk weather now arriving will make you feel much better.

I will be very glad indeed to see you whenever it is practicable.

AS W

Yours truly,

Copy to Mr. W.G. Clyde
Carnegie Steel Co.,
Pittsburgh, Pa.

Warren, Jones & Gratz,
St. Louis, Mo.

AMERICAN MANUFACTURING COMPANY.

BAGGING FOR BALING COTTON
AND COTTAGE

NOBLE AND WEST STREETS

BROOKLYN, NEW YORK CITY
January 19, 1916.

Mr. C. B. Wallace,
Ladies Manufacturing Associates,
111 Devonshire Street,
Boston, Mass.

Dear Sir:-

Your favor of January 18th received.

The trouble in the Steel business is to get the Steel - however, we are going to have some Ties.

You may consider this letter an option on 150,000 bundles, open to you for one week after we name a price. Ties to be ready for immediate shipment at that time.

If, in the meantime, you can arrange storage for these Ties at Galverston, so much the better.

I suggest that it is quite probable that there may be trouble getting shipments from Pittsburgh through, and it will be well if you can ask the railroad company at Galveston to take care of the Ties at the earliest possible date.

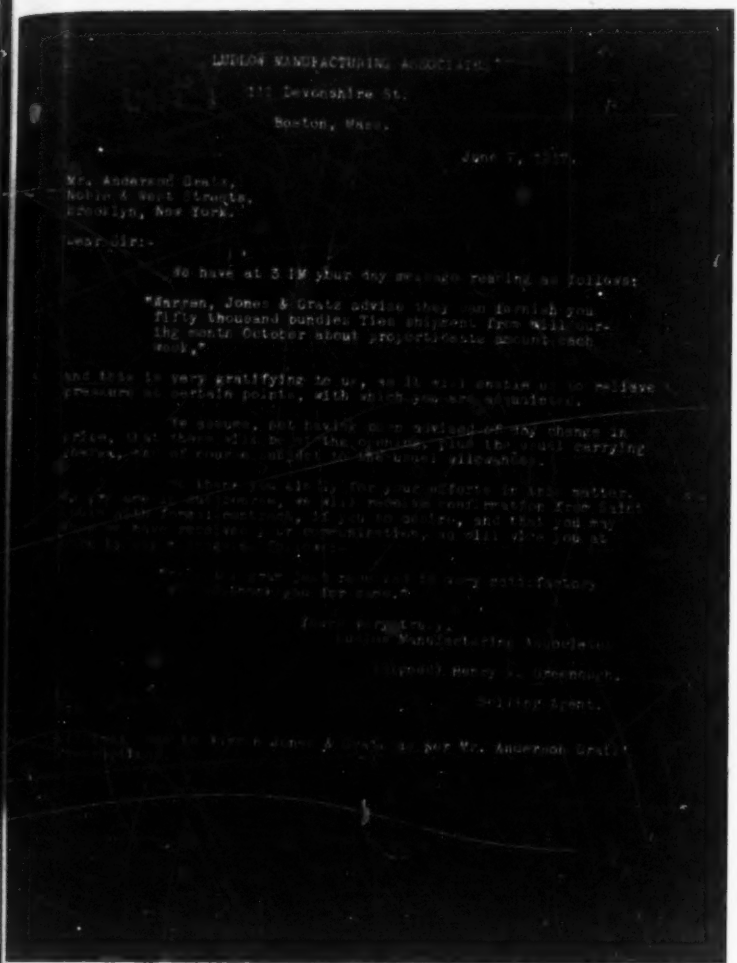
Allow me to say that if it had not been for your consistent preference given to us in this business, we most certainly could never have arranged with the Carnegie Steel Co. to give you this option.

Yours truly,

(Signed) - Anderson Bros.

AB:A

INCOMING TELEGRAM



LUDLOW MANUFACTURING ASSOCIATES

111 Devonshire St.

Boston, Mass.

June 7, 1919.

Mr. Amoreaux Gratz,
Rohrs & West Streets,
Brooklyn, New York.

Dear Sir:-

We have at 3 PM this day received cable as follows:

"Warren, Jones & Gratz advise they can furnish you fifty thousand bundles Ties shipment from Mill during months October about proportionate amount each week."

and this is very gratifying to us, as it will enable us to relieve pressure on certain points, with which you are familiar.

In return, not having to consider any change in [illegible] that there will be the opportunity [illegible] carrying charges, [illegible] under usual allowances.

[illegible] for your efforts in this matter, [illegible] and that you may [illegible] to all who [illegible]

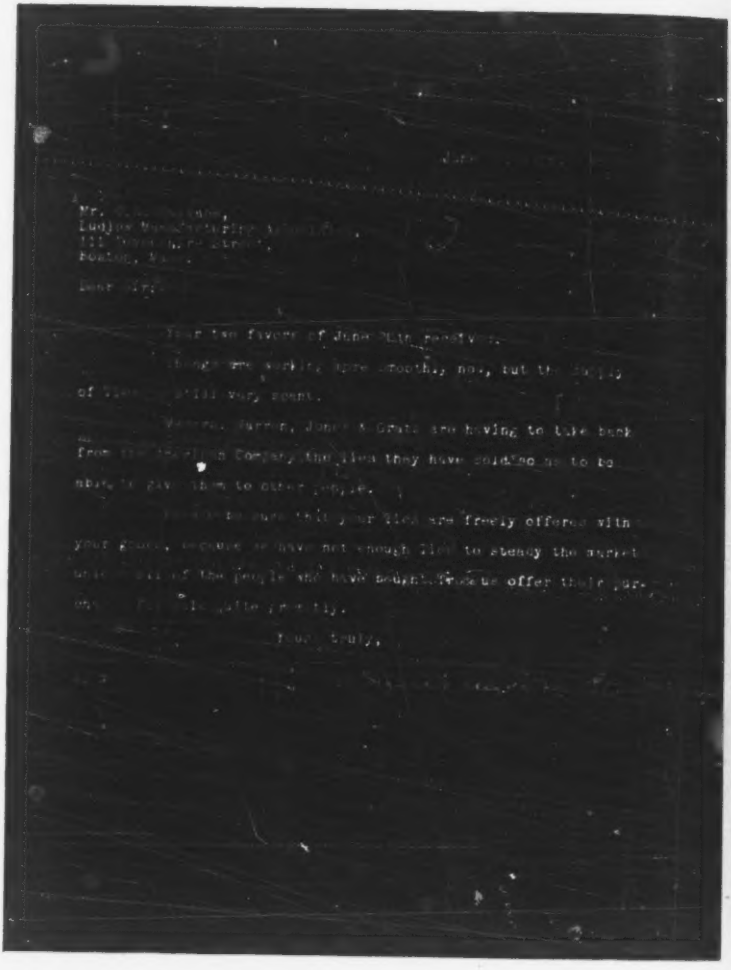
[illegible] satisfactory [illegible]

[illegible] Manufacturing Associates

[illegible] Percy L. Greenough.

[illegible] Selling Agent.

[illegible] per Mr. Amoreaux Gratz



AMERICAN MANUFACTURING COMPANY.

MANUFACTURERS OF
BAGGING FOR BALING COTTON
AND OF CANVASS

NOBLE AND WEST STREETS

BROOKLYN, NEW YORK CITY
July 7, 1916.

Mr. C.N. Wallace,
Ludlow Manufacturing Associates,
111 Devonshire Street,
Boston, Mass.

Dear Sir:-

Your letter of July 6th received.

You are under some misapprehension. I have never controlled the number of Ties to be made nor the price. My advice has usually been taken as to the number of Ties manufactured, and has sometimes been taken as to the price - not always.

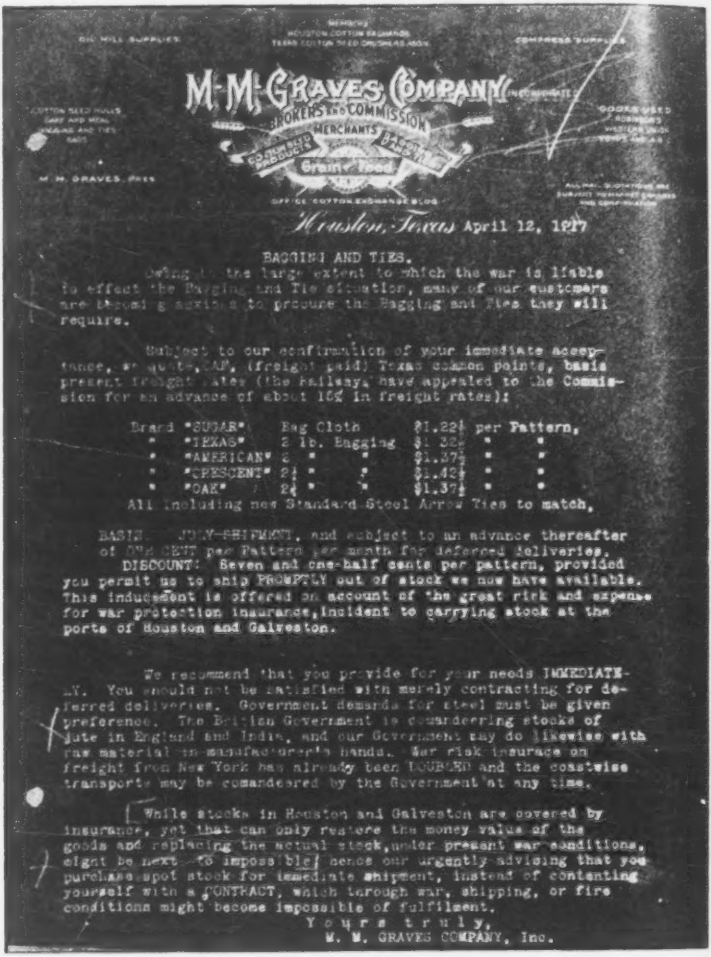
This year I told the Carnegie Steel Co. that it was necessary to have 1,000,000 bundles of ties by the first of July, based on their competitors making about so many. Now, either the competitors have not made that many, or they are not willing to sell them freely, and the demand thrown on us has been more than we can supply.

Amongst the earliest sales made by the Carnegie Steel Co. were 200,000 bundles to the Ludlow Mfg. Co. and 500,000 bundles to the American Manufacturing Co. - total 700,000 bundles, deliveries scattered over until November. Beginning July 1st with 1,000,000 bundles, we have counted on the Carnegie Co. supplying us a total of 1,400,000 bundles. Including the 700,000 bundles mentioned above, Warren, Jones & Gratz have sold 1,330,000 bundles - just how it would be possible for them to continue selling to anybody I do not know.

The American Manufacturing Co. is continuing to supply Ties out of the 500,000 bundles, they have bought and have so far obligated about 350,000 bundles. That leaves 150,000 bundles for sale to November, and naturally we want that 150,000 bundles to bring Bagging business.

Messrs. Warren, Jones & Gratz as the selling Agents for the American Mfg. Co. cannot be allowed to sell those Ties except along with their Bagging. If we can get any more from the Carnegie people, they will be for sale first to the people who have bought the other 1,300,000 bundles, and then to the trade in general.

The Ludlow Company have been much better protected in this matter than the American Manufacturing Co. You have a provision of 335,000 bundles, while the total Ties on which the American



M. M. GRAVES COMPANY, INCORPORATED
BROKERS AND COMMISSION MERCHANTS
Grain & Seed
OFFICE COTTON EXCHANGE BLDG.

Houston, Texas April 12, 1917

BAGGING AND TIES.

Owing to the large extent to which the war is liable to effect the Bagging and Tie situation, many of our customers are already making application to procure the Bagging and Ties they will require.

Subject to our confirmation of your immediate acceptance, we quote, C.A.F. (freight paid) Texas common points, basis present freight rates (the railways have appealed to the Commission for an advance of about 15% in freight rates):

Brand "SUGAR"	Bag Cloth	$1.22½	per Pattern,
" "TEXAS"	2 lb. Bagging	$1.22½	" "
" "AMERICAN"	2 " "	$1.27½	" "
" "CRESCENT"	2¼ " "	$1.42½	" "
" "OAK"	2¼ " "	$1.37½	" "

All including new Standard Steel Arrow Ties to match,

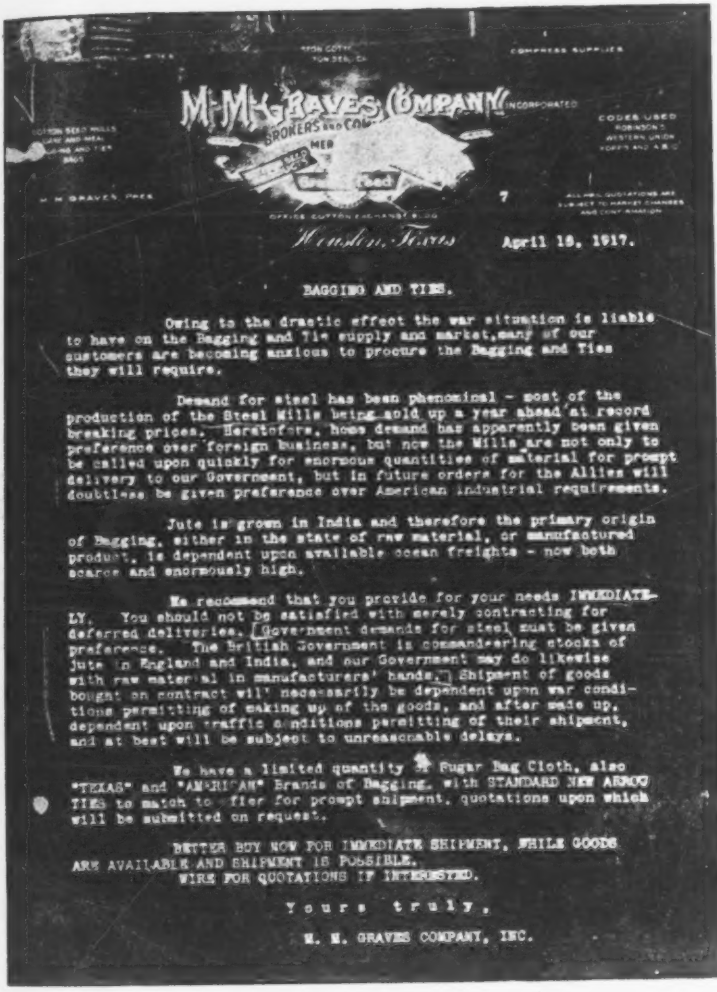
BASIS: JULY-SHIPMENT, and subject to an advance thereafter of ONE CENT per Pattern per month for deferred deliveries.

DISCOUNT: Seven and one-half cents per pattern, provided you permit us to ship PROMPTLY out of stock we now have available. This inducement is offered on account of the great risk and expense for war protection insurance, incident to carrying stock at the ports of Houston and Galveston.

We recommend that you provide for your needs IMMEDIATELY. You should not be satisfied with merely contracting for deferred deliveries. Government demands for steel must be given preference. The British Government is commandeering stocks of jute in England and India, and our Government may do likewise with raw material in manufacturers' hands. War risk insurance on freight from New York has already been DOUBLED and the coastwise transports may be commandeered by the Government at any time.

While stocks in Houston and Galveston are covered by insurance, yet that can only restore the money value of the goods and replacing the actual stock, under present war conditions, might be next to impossible; hence our urgently advising that you purchase spot stock for immediate shipment, instead of contenting yourself with a CONTRACT, which through war, shipping, or fire conditions might become impossible of fulfilment.

Yours truly,
W. M. GRAVES COMPANY, Inc.



M. M. GRAVES COMPANY INCORPORATED
BROKERS AND CONSIGNEES
MEMPHIS
Memphis Road

Houston, Texas April 18, 1917.

BAGGING AND TIES.

Owing to the drastic effect the war situation is liable to have on the Bagging and Tie supply and market, many of our customers are becoming anxious to procure the Bagging and Ties they will require.

Demand for steel has been phenominal - most of the production of the Steel Mills being sold up a year ahead at record breaking prices. Heretofore, home demand has apparently been given preference over foreign business, but now the Mills are not only to be called upon quickly for enormous quantities of material for prompt delivery to our Government, but in future orders for the Allies will doubtless be given preference over American industrial requirements.

Jute is grown in India and therefore the primary origin of Bagging, either in the state of raw material, or manufactured product, is dependent upon available ocean freights - now both scarce and enormously high.

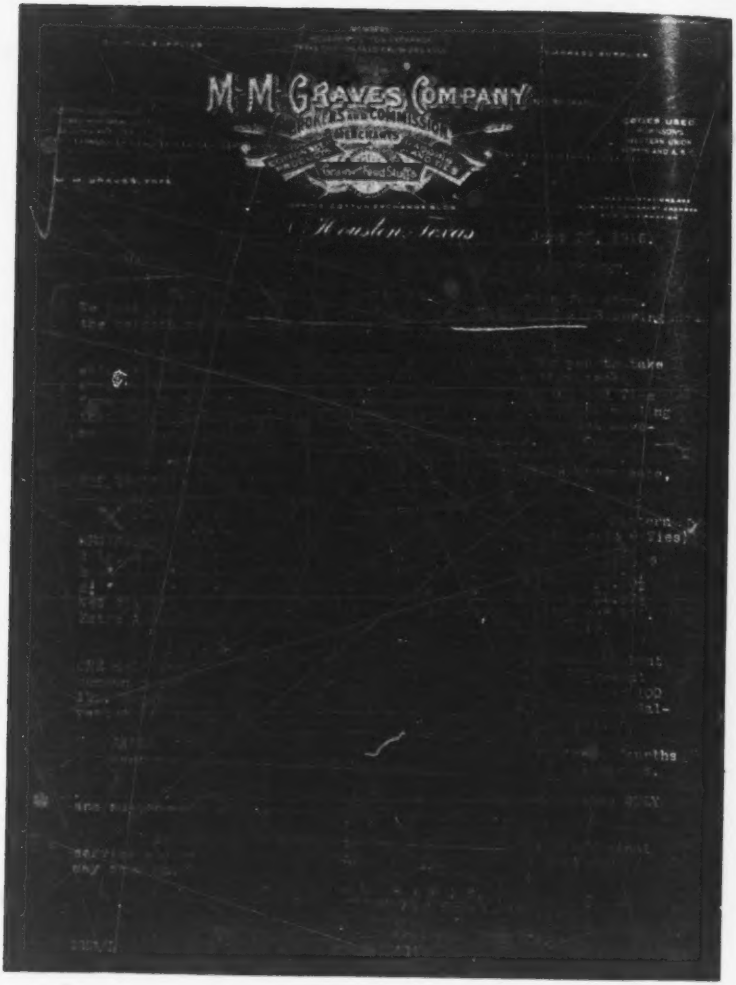
We recommend that you provide for your needs IMMEDIATELY. You should not be satisfied with merely contracting for deferred deliveries. Government demands for steel must be given preference. The British Government is commandeering stocks of jute in England and India, and our Government may do likewise with raw material in manufacturers' hands. Shipment of goods bought on contract will necessarily be dependent upon war conditions permitting of making up of the goods, and after made up, dependent upon traffic conditions permitting of their shipment, and at best will be subject to unreasonable delays.

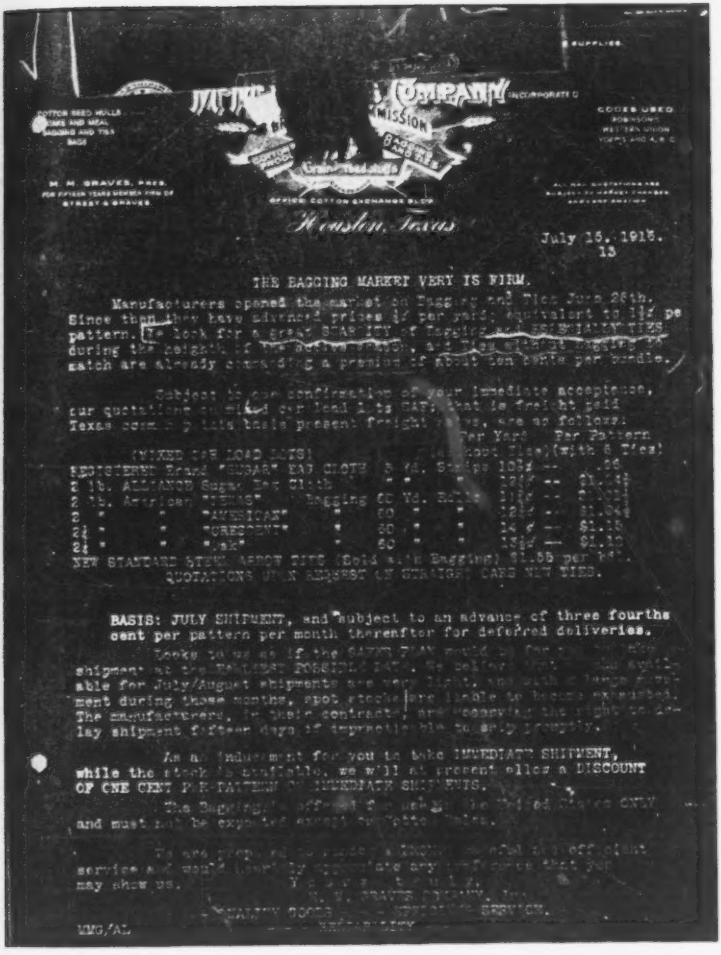
We have a limited quantity of Sugar Bag Cloth, also "TEXAS" and "AMERICAN" Brands of Bagging, with STANDARD NEW ARROW TIES to match to offer for prompt shipment, quotations upon which will be submitted on request.

BETTER BUY NOW FOR IMMEDIATE SHIPMENT, WHILE GOODS ARE AVAILABLE AND SHIPMENT IS POSSIBLE.
WIRE FOR QUOTATIONS IF INTERESTED.

Yours truly,

M. M. GRAVES COMPANY, INC.


M M GRAVES COMPANY
Houston Texas



COTTON SEED HULLS
BRAN AND MEAL
GROUND AND TIED
BAGS

M. M. GRATZ, PRES.
FOR FIFTEEN YEARS MEMBER FIRM OF
GRATZ & GRATZ.

COMPANY (INCORPORATED)
COMMISSION
MERCHANTS

CODES USED
ROBINSON
WESTERN UNION
7TH ED. & A. B. C.

OFFICIAL COTTON EXCHANGE BLDG.

Houston, Texas

July 15, 1918.
13

THE BAGGING MARKET VERY IS FIRM.

Manufacturers opened the market on Bagging and Ties June 26th. Since then they have advanced prices 1/ per yard, equivalent to 1¼ pe pattern. We look for a great SHORTAGE of Domestic Bagging during the height of the cotton season, and ties without bagging for match are already commanding a premium of about ten cents per bundle.

Subject to our confirmation of your immediate acceptance, our quotations for mixed car lots to GATX, that is freight paid Texas common points this basis present freight rates, are as follows:

				Per Yard	Per Pattern
(MIXED CAR LOAD LOTS)				(About 11lbs)(with 6 Ties)	
REGISTERED Brand "SUGAR" BAY CLOTH	2	yd.	Single	10½	.26
2 lb. ALLIANCE Sugar Bag Cloth	2	"	"	12½	$1.44
2 lb. American "STAR"	Bagging	60	Yd.	11½	$1.32½
2 " " "AMERICAN"	"	60	"	12½	$1.44
2¼ " " "OREGONIAN"	"	60	"	14 ¢	$1.15
2¼ " " "Oak"	"	60	"	13½	$1.15

NEW STANDARD STEEL ARROW TIES (Sold with Bagging) $1.65 per bdl.
QUOTATIONS UPON REQUEST ON STRAIGHT CARS NOT MIXED.

BASIS: JULY SHIPMENT, and subject to an advance of three fourths cent per pattern per month thereafter for deferred deliveries.

Looks to us as if the SAVVY PLAN would [illegible] shipment at the EARLIEST POSSIBLE DATE, as bagging now available for July/August shipments are very light, and with large shipment during those months, spot stocks are liable to become exhausted. The manufacturers, in their contracts, are reserving the right to delay shipment fifteen days if impracticable to ship promptly.

As an inducement for you to take IMMEDIATE SHIPMENT, while the stock is available, we will at present allow a DISCOUNT OF ONE CENT PER PATTERN ON IMMEDIATE SHIPMENTS.

The Bagging offered for sale is for shipment within the United States ONLY, and must not be exported except on [illegible] orders.

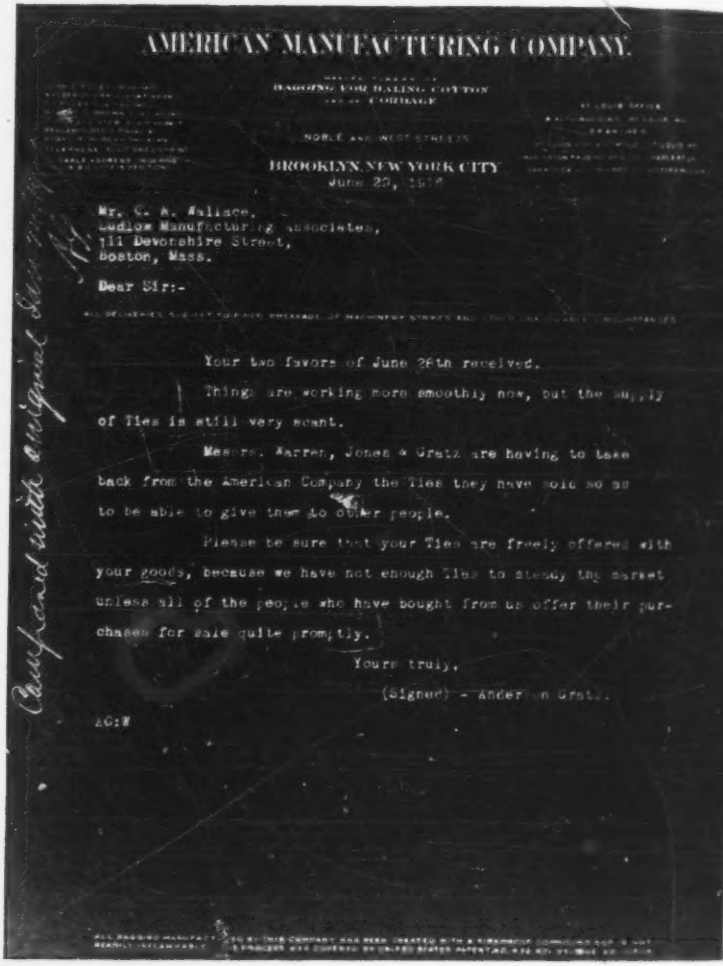
We are prepared to furnish a [illegible] efficient service and would appreciate any inquiries that you may show us.

Yours very truly,

M. M. GRATZ COMPANY, Inc.

QUALITY GOODS [illegible] SERVICE.

MMG/AL



AMERICAN MANUFACTURING COMPANY.

BAGGING FOR BALING COTTON
AND COTTAGE

NORLE AND WEST STREETS

BROOKLYN, NEW YORK CITY
June 22, 1914

Mr. C. A. Wallace,
Ludlow Manufacturing Associates,
111 Devonshire Street,
Boston, Mass.

Dear Sir:-

Your two favors of June 20th received.

Things are working more smoothly now, but the supply of Ties is still very scant.

Messrs. Warren, Jones & Gratz are having to take back from the American Company the Ties they have sold so as to be able to give them to other people.

Please be sure that your Ties are freely offered with your goods, because we have not enough Ties to steady the market unless all of the people who have bought from us offer their purchases for sale quite promptly.

Yours truly,

(Signed) - Anderson Gratz.

AG:W

Compared with original See [illegible]

M. M. GRAVES COMPANY

Grain Feed

Houston, Texas

April 6, 1917.

BAGGING AND TIES.

Dear Sirs:-

Many of our customers are becoming anxious as to the Bagging and Tie situation. As both commodities are liable to be radically effected by war conditions.

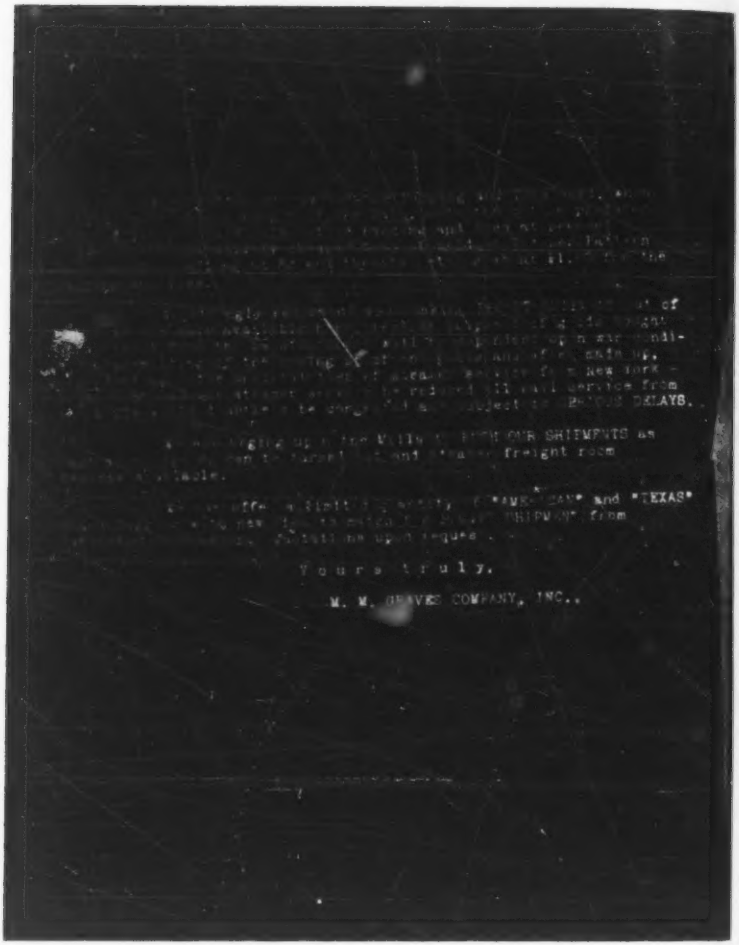
Jute is grown in India and therefore the primary origin of Bagging, either in the state of raw material, or manufactured product, is dependent upon available ocean freights - now both scarce and enormously high.

Demand for steel has been phenominal - most of the production of the Steel Mills being sold up a year ahead at record breaking prices. Heretofore, home demand has apparently been given preference over foreign business, but now the Mills are not only to be called upon quickly for enormous quantities of material for prompt delivery to our Government, but in future orders for the Allies will doubtless be given preference over American industrial requirements.

For prompt shipment FROM HOUSTON and subject confirmation of your immediate acceptance, we offer Registered Brand "SUGAR" - the best Sugar Bag Cloth on the market - with Standard new Steel Arrow Ties to match at $1.15 per Pattern, CAF (freight paid) Texas common points.

We also offer Sugar Bag Cloth in straight carload lots at 10¢ per yard F.O.B. New York, which based on present freight rates is equivalent to about 10 7/8¢ Texas common points, but on sales made FOB New York payment is due when goods are shipped and shipment is at YOUR RISK, subject to all war risks, requisition by the Government of steamers now engaged in New York to Galveston and Houston service, loss while in transit by submarine, or otherwise, etc.

We will also sell at $1.20 per pattern, basis July shipment and subject to an advance thereafter of one cent per pattern per month for deferred deliveries, but contracts calling for future deliveries will carry the protective clause used by the manufacturers making deliveries subject to delays caused by war, war conditions, strikes, labor conditions, etc.



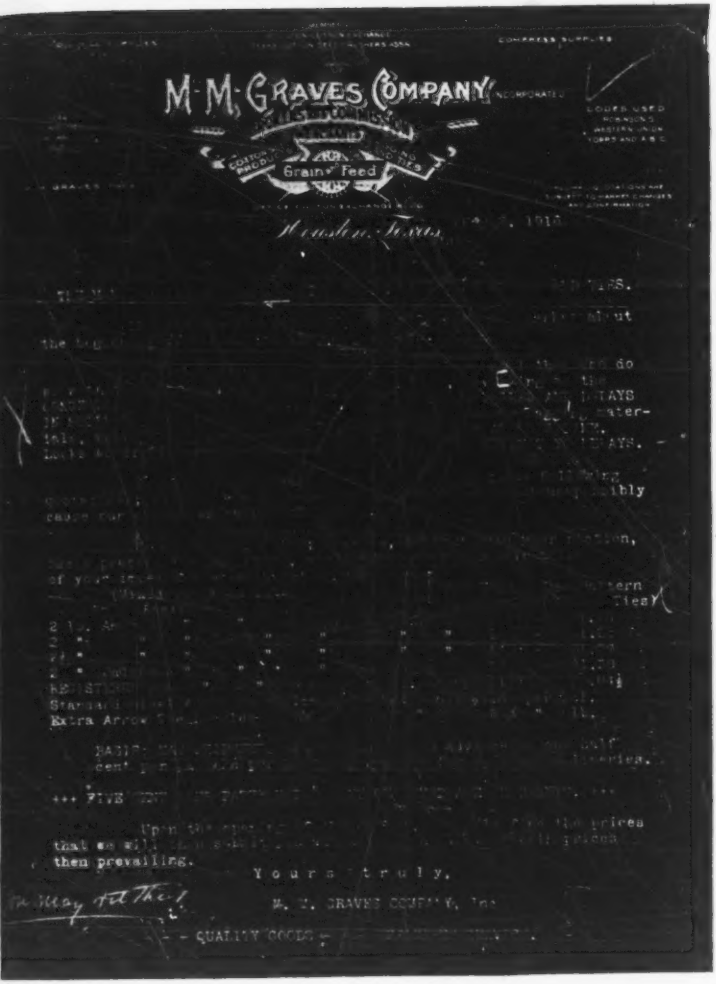
...of
...n air condi-
...main in.
...New York -
...service from
...DELAYS.

...FROM OUR SHIPMENTS as
...freight room

...and "TEXAS"
...from

Yours truly,

W. W. GRAVES COMPANY, INC.



M. M. GRAVES COMPANY

Grain Feed

Houston, Texas.

Yours truly,

M. M. GRAVES COMPANY, Inc.

- QUALITY GOODS -

AMERICAN MANUFACTURING COMPANY.

MANUFACTURERS OF
STANDARD FINE RAILWAY COTTON
AND
DUNDAGE

NOBLE AND WEST STREETS

BROOKLYN, NEW YORK CITY
July 7, 1916.

Mr. C. N. Wallace . . . . . #2.

I

Company has any claim were 500,000 bundles. If anybody suffers in the whole operation, it will be the American Company.

To gain an advantage on our competitors and guard ourselves from disaster, we should have taken the Carnegie Co's whole 1,400,000 bundles, and would have been glad to do so except for the broader policy protecting the Carnegie Co's trade by giving Ties to everyone who had been their customers in years past.

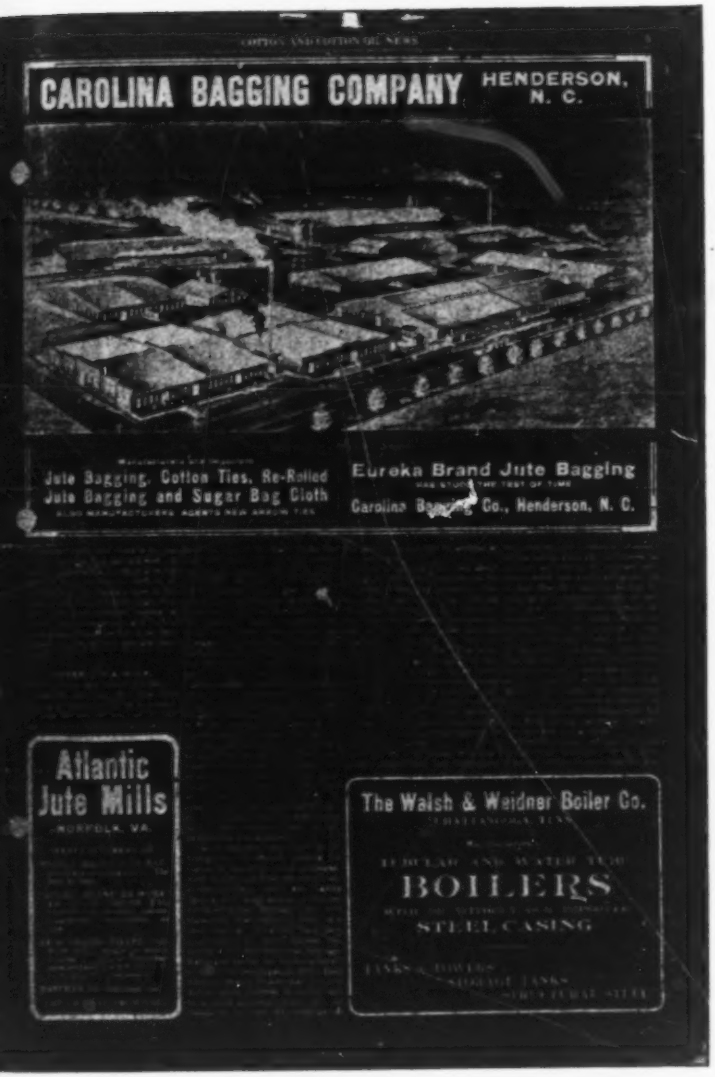
I am expecting to hear to-day as to additional supplies of Ties, but fear that there will be very few possible for us to get.

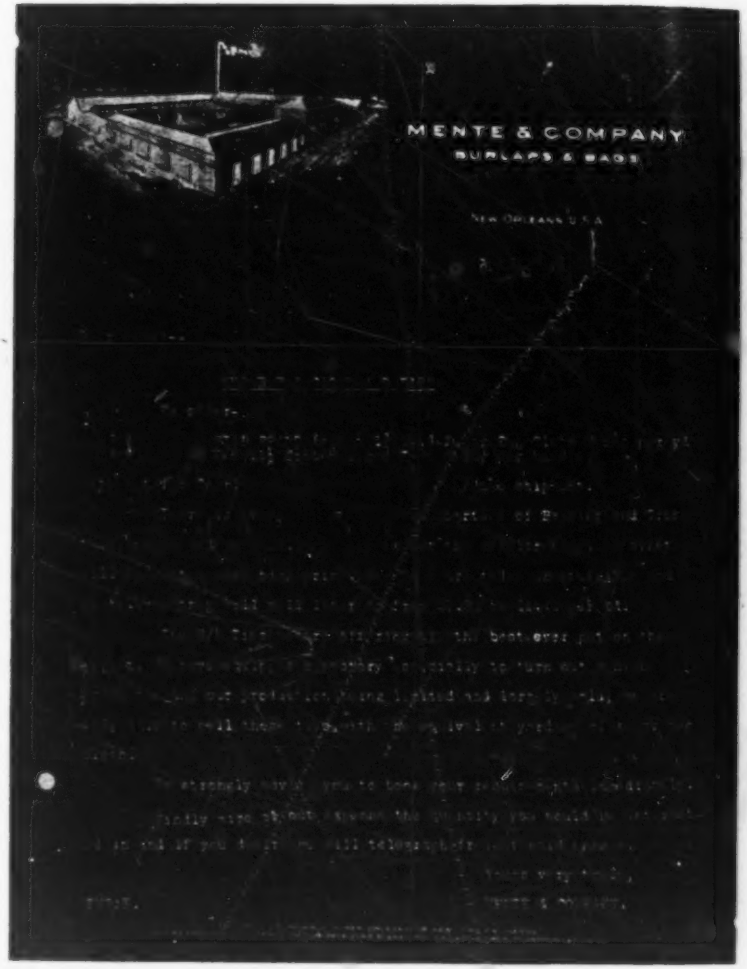
This is one year when the Carnegie Steel Co. can well afford investigation. They have sacrificed their other business and large profits to make their usual quantity of Ties - have sold those Ties to their usual customers at a moderate price, even while others were getting from 10¢ to 25¢ per bundle more, and now, even yet, are disposed to criticize them because they have not made 50% more Ties than they have usually made, and sold them to people who have not usually been their customers.

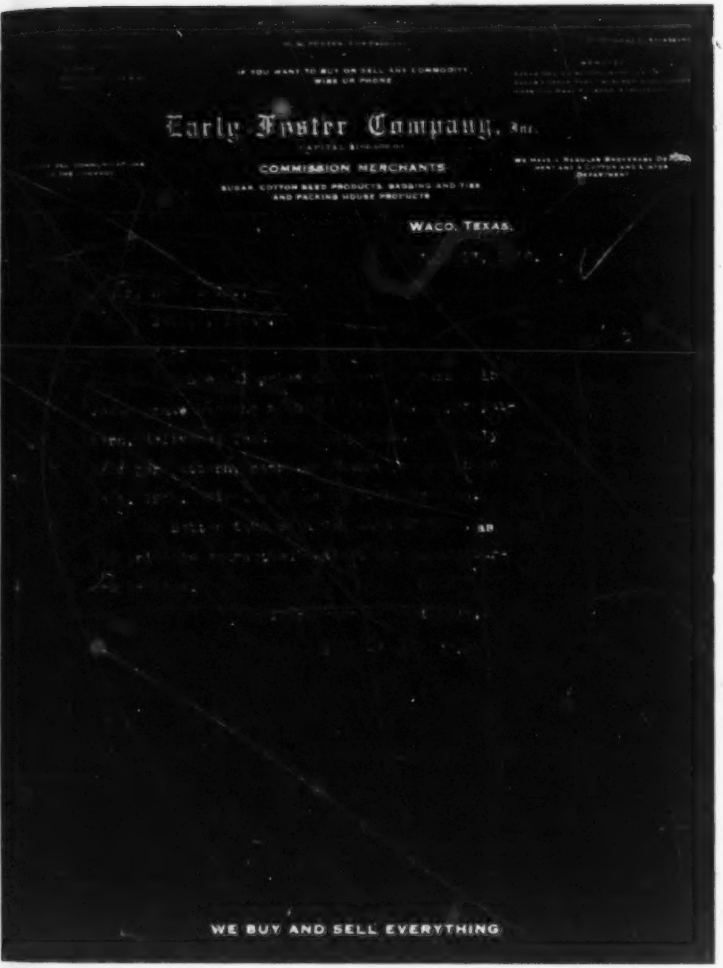
Yours truly,

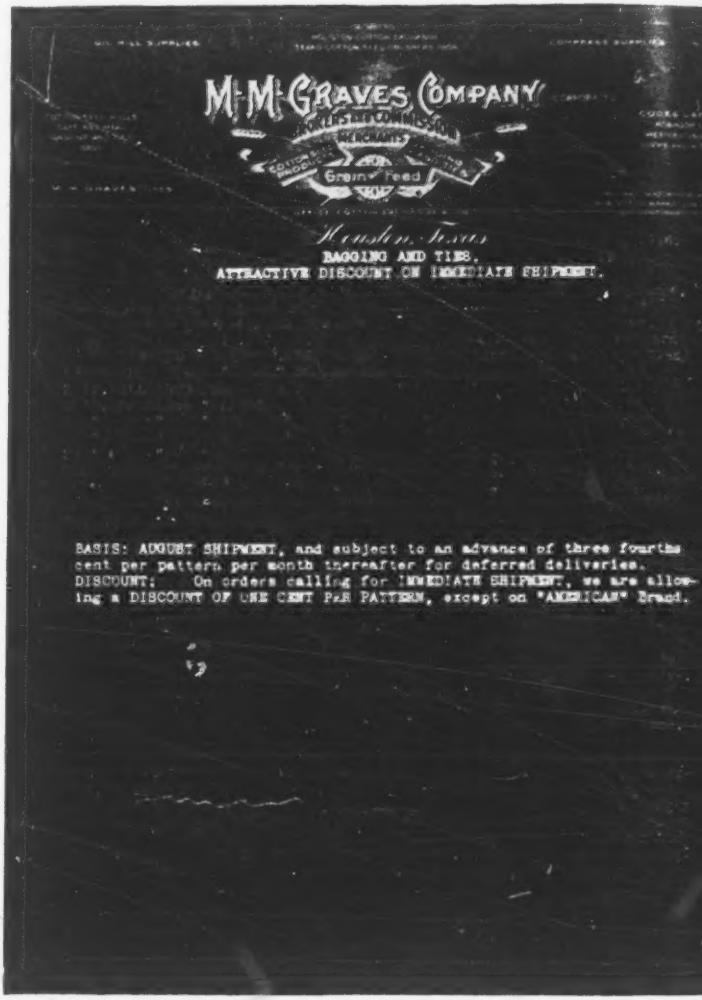
(Signed) - Anderson Gratz.

AG:#

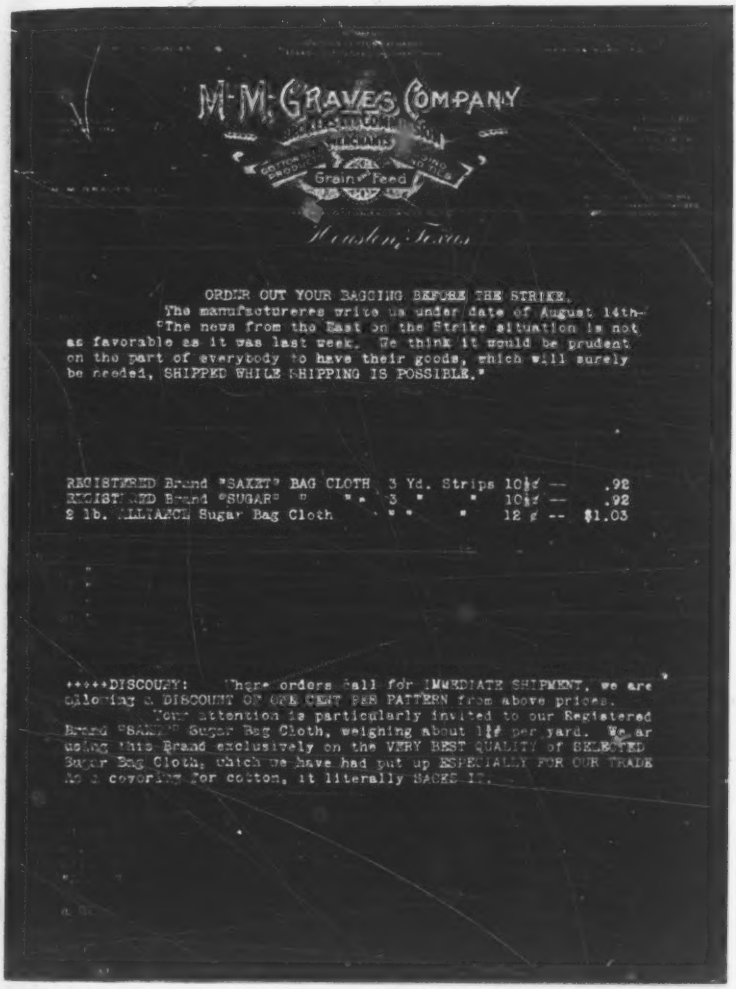

CAROLINA BAGGING COMPANY
HENDERSON, N. C.
Jute Bagging, Cotton Ties, Re-Rolled Jute Bagging and Sugar Bag Cloth
Eureka Brand Jute Bagging
Carolina Bagging Co., Henderson, N. C.
Atlantic Jute Mills
NORFOLK, VA.
The Walsh & Weidner Boiler Co.
BOILERS
STEEL CASING


MENTE & COMPANY
BURLAPS & BAGS


Early Foster Company, Inc.
COMMISSION MERCHANTS
WACO, TEXAS.
WE BUY AND SELL EVERYTHING


M. M. GRAVES COMPANY
Grain Feed
Houston, Texas
BAGGING AND TIES.
ATTRACTIVE DISCOUNT ON IMMEDIATE SHIPMENT.

BASIS: AUGUST SHIPMENT, and subject to an advance of three fourths cent per pattern per month thereafter for deferred deliveries.
DISCOUNT: On orders calling for IMMEDIATE SHIPMENT, we are allowing a DISCOUNT OF ONE CENT PER PATTERN, except on "AMERICAN" Brand.



M-M-GRAVES COMPANY

Grain Feed

Houston, Texas

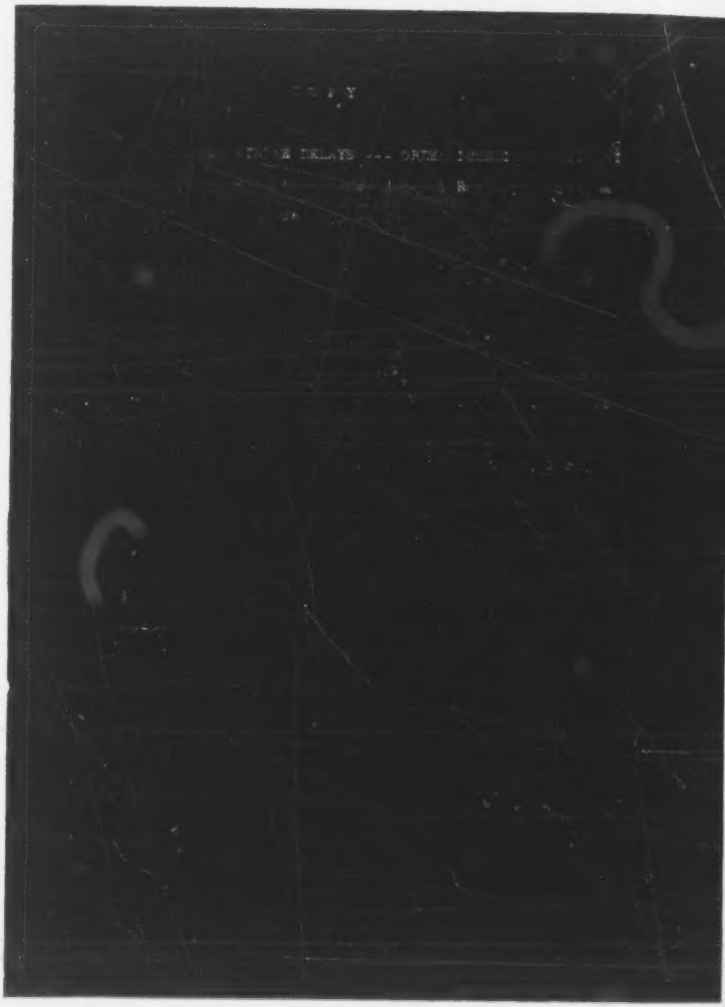
ORDER OUT YOUR BAGGING BEFORE THE STRIKE.

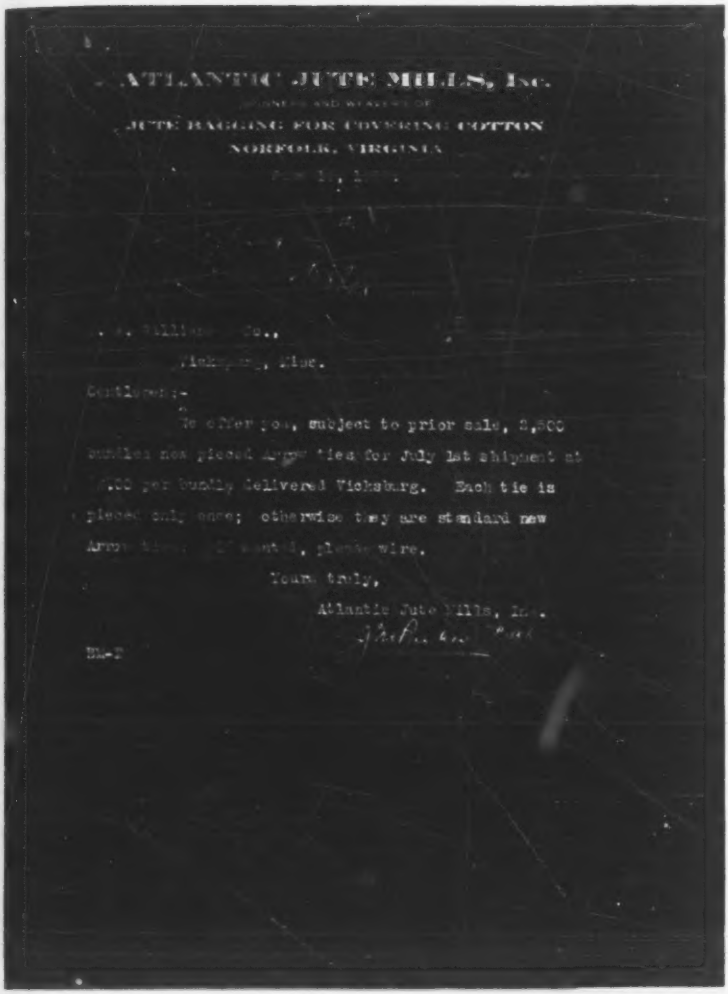
The manufactureres write us under date of August 14th-
"The news from the East on the Strike situation is not as favorable as it was last week. We think it would be prudent on the part of everybody to have their goods, which will surely be needed, SHIPPED WHILE SHIPPING IS POSSIBLE."

REGISTERED Brand "SAXET" BAG CLOTH	3 Yd. Strips	10½¢ --	.92
REGISTERED Brand "SUGAR" " " "	3 " "	10½¢ --	.92
2 lb. MILITARY Sugar Bag Cloth	" " "	12 ¢ --	$1.03

+++++DISCOUNT: Where orders call for IMMEDIATE SHIPMENT, we are allowing a DISCOUNT OF ONE CENT PER PATTERN from above prices.

Your attention is particularly invited to our Registered Brand "SAXET" Sugar Bag Cloth, weighing about 1¼# per yard. We are using this Brand exclusively on the VERY BEST QUALITY of SELECTED Sugar Bag Cloth, which we have had put up ESPECIALLY FOR OUR TRADE As a covering for cotton, it literally SAXES IT.





ATLANTIC JUTE MILLS, Inc.

JUTE BAGGING FOR COVERING COTTON

NORFOLK, VIRGINIA

Vicksburg, Miss.

Gentlemen:-

To offer you, subject to prior sale, 2,500 bundles now placed under tie for July 1st shipment at .00 per bundle delivered Vicksburg. Each tie is placed only once; otherwise they are standard new Arrow brand 2" eventid, plain wire.

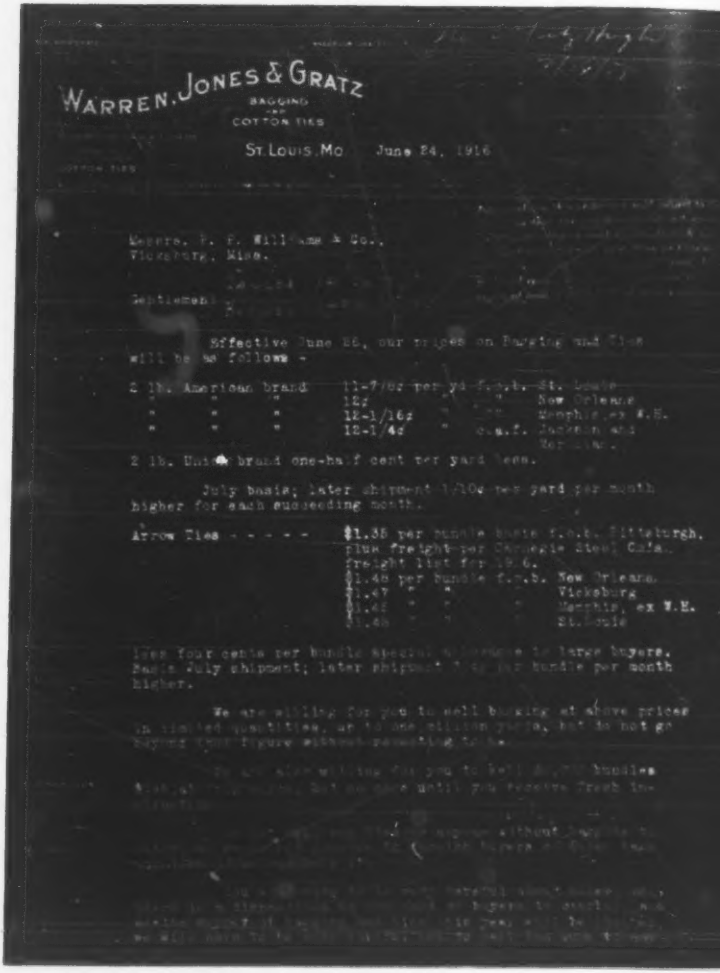
Yours truly,

Atlantic Jute Mills, Inc.

By-P

WARREN. JONES & GRATZ
St Louis Mo

WARREN. JONES & GRATZ
COTTON TIES
St Louis Mo



WARREN, JONES & GRATZ
BAGGING
AND
COTTON TIES

St. Louis, Mo. June 24, 1916

Messrs. F. F. Williams & Co.,
Vicksburg, Miss.

Gentlemen:

Effective June 26, our prices on Bagging and Ties will be as follows -

2 lb. American brand 11-7/8¢ per yd. f.o.b. St. Louis
" " " 12¢ " " New Orleans
" " " 12-1/16¢ " " Memphis, ex M.R.
" " " 12-1/4¢ " c.a.f. Jackson and Vicksburg.

2 lb. Union brand one-half cent per yard less.

July basis; later shipment 1/10¢ per yard per month higher for each succeeding month.

Arrow Ties - - - - - $1.35 per bundle basis f.o.b. Pittsburgh.
Plus freight per Carnegie Steel Co's. freight list for 19.6.
$1.45 per bundle f.o.b. New Orleans.
$1.47 " " Vicksburg
$1.45 " " Memphis, ex M.R.
$1.45 " " St. Louis

less four cents per bundle special allowance to large buyers. Basis July shipment; later shipment [illegible] per bundle per month higher.

We are willing for you to sell bagging at above prices in limited quantities, up to one million yards, but to not go beyond your figure without permission to us.

We are also willing for you to sell [illegible] bundles [illegible] But we ask until you receive fresh in-

P.F.Williams & Co. No.2

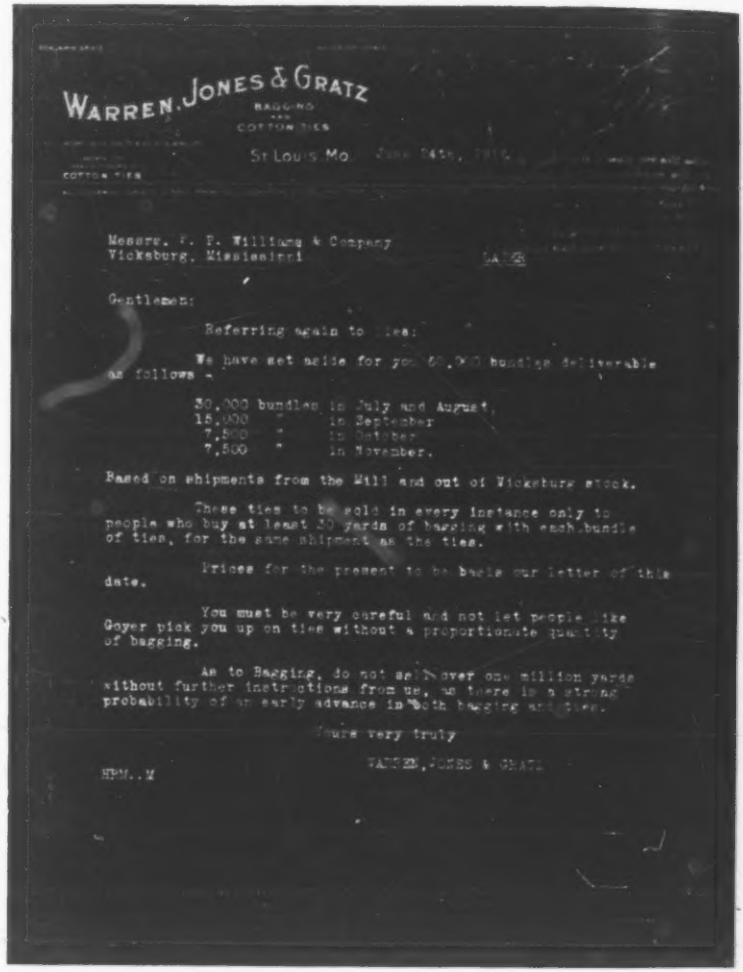
one party at these opening prices. In this way we may possibly be able to control supply and prices to some extent.

All bagging will be sold subject to the regulations and requirements of the British Textile Alliance Inc. and purchasers will have to sign a guaranty of purchase.

Yours very truly

WARREN,JONES & GRATZ

HRM..M



WARREN, JONES & GRATZ

BAGGING
AND
COTTON TIES

St Louis Mo June 24th, 1915

COTTON TIES

Messrs. F. P. Williams & Company
Vicksburg, Mississippi

Gentlemen:

Referring again to ties:

We have set aside for you 60,000 bundles deliverable as follows -

30,000 bundles in July and August,
15,000 " in September
7,500 " in October
7,500 " in November.

Based on shipments from the Mill and out of Wicksburg stock.

These ties to be sold in every instance only to people who buy at least 30 yards of bagging with each bundle of ties, for the same shipment as the ties.

Prices for the present to be basis our letter of this date.

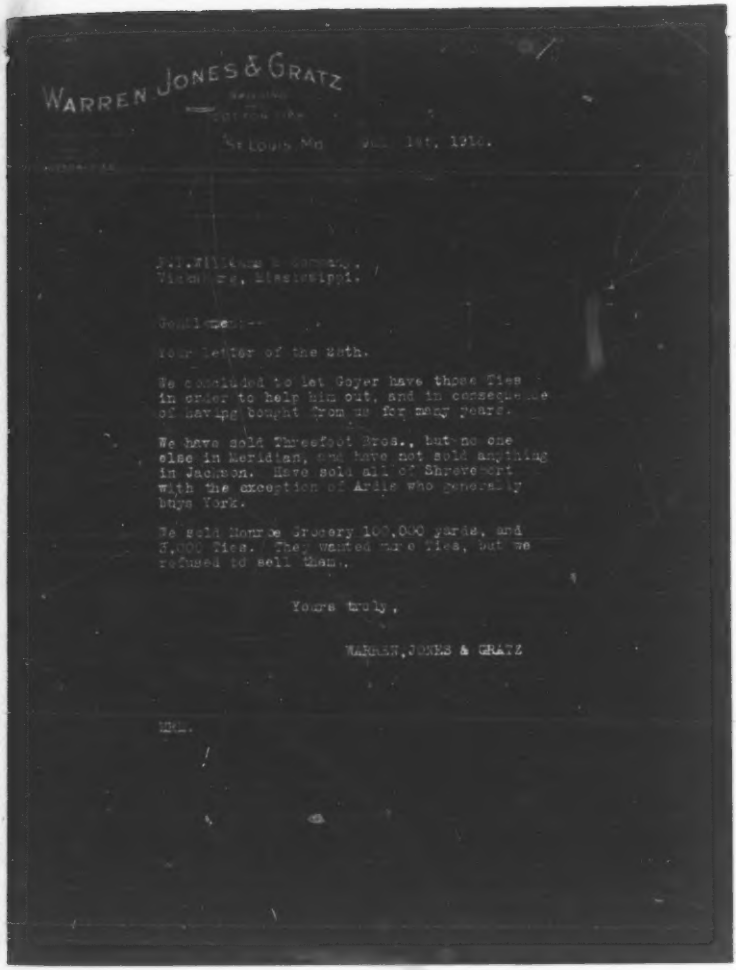
You must be very careful and not let people like Goyer pick you up on ties without a proportionate quantity of bagging.

As to Bagging, do not sell over one million yards without further instructions from us, as there is a strong probability of an early advance in both bagging articles.

Yours very truly

WARREN, JONES & GRATZ

HWM..M



WARREN JONES & GRATZ

St Louis Mo Jan. 1st, 1916.

Mr. William [illegible] Company.
Vicksburg, Mississippi.

Gentlemen:-

Your letter of the 26th.

We concluded to let Goyer have those Ties in order to help him out, and in consequence of having bought from us for many years.

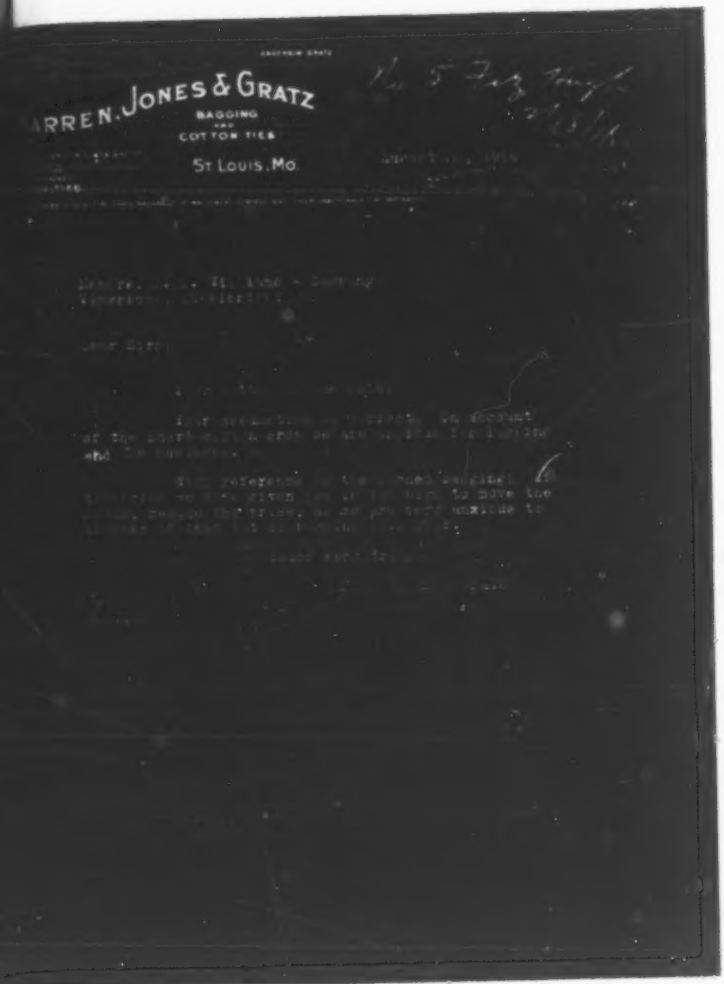
We have sold Threefoot Bros., but no one else in Meridian, and have not sold anything in Jackson. Have sold all of Shreveport with the exception of Arlie who generally buys York.

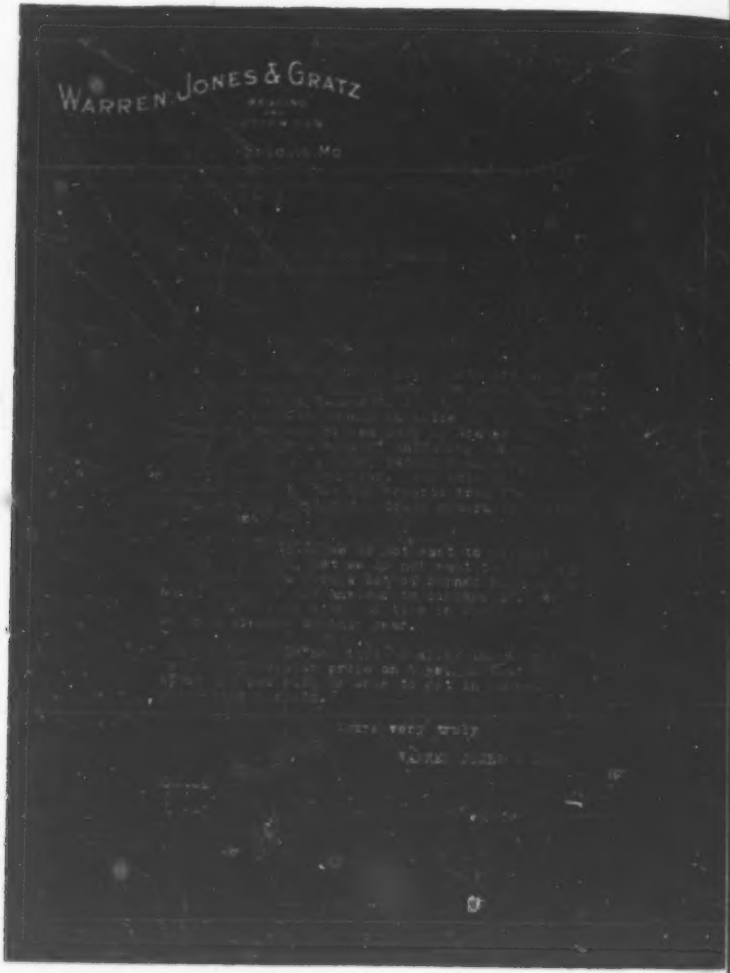
We sold Monroe Grocery 100,000 yards, and 3,000 Ties. They wanted more ties, but we refused to sell them.

Yours truly,

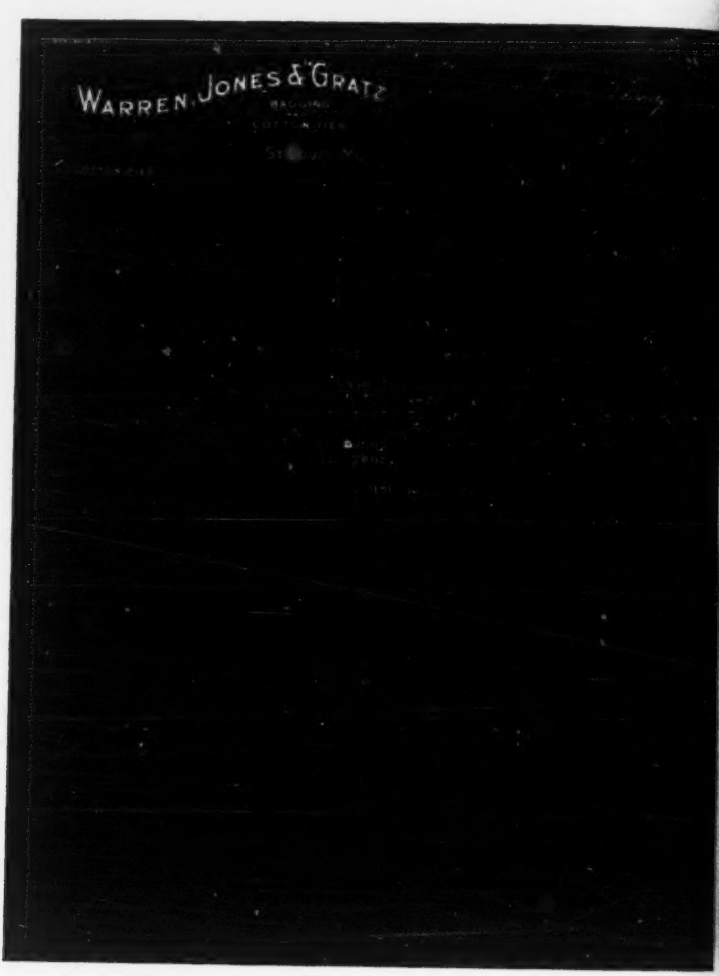
WARREN,JONES & GRATZ

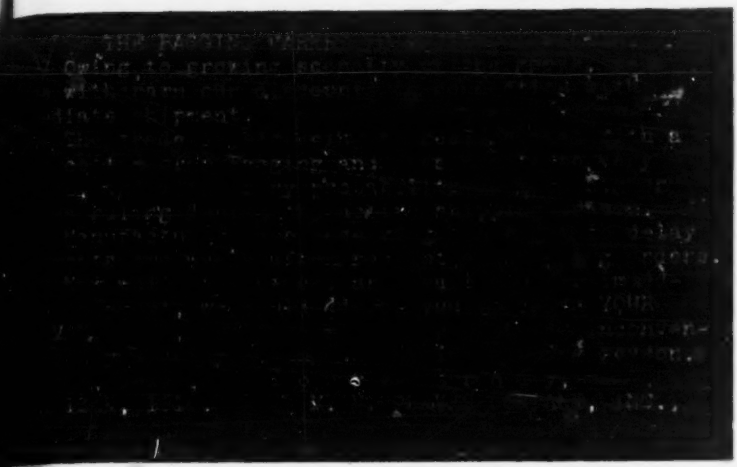
WJG.

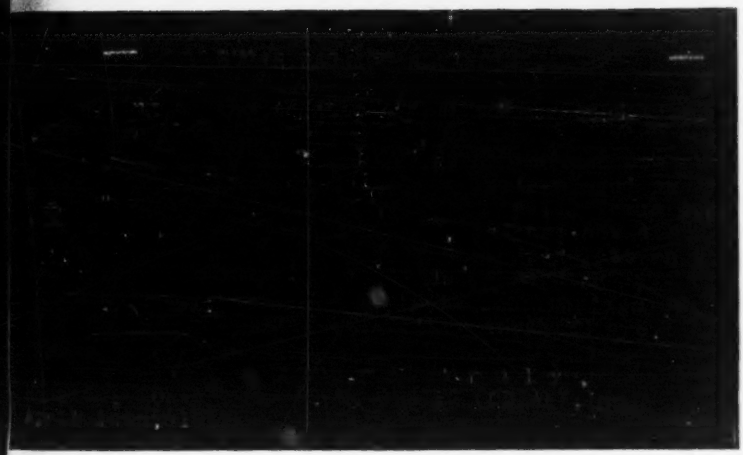

ARREN, JONES & GRATZ
BAGGING
AND
COTTON TIES
St Louis, Mo.


WARREN JONES & GRATZ

475


WARREN, JONES & GRATZ





1055 United States Circuit Court of Appeals for the Second Circuit.

October Term, 1918.

Argued April 11, 1919. Decided May 14, 1919.

FEDERAL TRADE COMMISSION
against
ANDERSON GRATZ AND BENJAMIN GRATZ, copartners, doing business under the firm name and style of Warren, Jones & Gratz, P. P. Williams, W. H. Fitzhigh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer, respondents. | No. 236.

Petition of Warren, Jones & Gratz, by Anderson Gratz, for an order for the review of the findings and order of the Federal Trade Commission and for an order setting them aside.

Petition to revise order of the Federal Trade Commission.

Before Ward, Hough, and Manton, circuit judges.

T. F. Magner, for petitioner.

John Walsh, for respondent.

WARD, Circuit Judge:

1056 This is a petition of Anderson Gratz, a member of the firm of Warren, Jones & Gratz, under section 5 of the act of September 26, 1914 (38 Stat. L., 730), creating the Federal Trade Commission, to review the following order of the Commission:

"Therefore, it is ordered, that the respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, their officers and agents, cease and desist from requiring purchasers of cotton ties to also buy or agree to buy, a proportionate amount of American Manufacturing Company's bagging, and further, that the respondent cease and desist from refusing to sell cotton ties unless the purchasers buy or agree to buy from them corresponding amounts of American Manufacturing Company's bagging, or any amount of cotton bagging of any kind.

"By the Commission,

[SEAL.] "L. L. BRACKEN, *Secretary.*"

If Anderson Gratz has not sufficient standing to file this petition, counsel for the Commission has very fairly waived the objection and invited the court to dispose of the questions raised.

The first count of the complaint served on the respondents, which is the only one involved, is as follows:

"Paragraph one: That the respondents, Anderson Gratz and Benjamin Gratz, are copartners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the city of St. Louis, and State of Missouri, and are engaged in the business of selling, in interstate commerce,
1057 either directly to the trade, or through the respondents hereinafter named, ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Company of Pittsburgh, Pennsylvania, and also selling in the same manner jute bagging, used to wrap bales of cotton and which jute bagging is manufactured by the American Manufacturing Company, of St. Louis, Missouri.

"Paragraph two: That the respondents, P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, are copartners, doing business under the firm name and style of P. P. Williams & Company, having their principal office and place of business in the city of Vicksburg, and State of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans, and State of Louisiana, are the selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginners, and farmers.

"Paragraph three: That with the purpose, intent, and effect of discouraging and stifling competition in interestate commerce in the sale of such bagging, all of the respondents do now refuse, and for more than a year last past have refused, to sell any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties proposed to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging."

The respondents filed an answer admitting the facts stated in paragraphs one and two, but denying the facts stated and the conclusion therefrom contained in paragraph three. They appeared and offered testimony before the Commission.

The Commission's material findings of fact and its conclusions of law are as follows:

1058 "Paragraph two: That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, adopted and practiced the

policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. * * *"

"Paragraph four: * * * The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Company, and, in many instances, said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging, and such purchasers were oftentimes compelled to buy bagging manufactured by the American Manufacturing Company, from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

CONCLUSIONS OF LAW.

"That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 1, 2, 3, and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers, and distributors of jute bagging and against other dealers and distributors in the material known as sugar-bag cloth, and against manufacturers, dealers, and distributors of the bagging known as rewoven bagging and secondhand bagging, in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled 'An act to create a Federal Trade
1059 Commission, to define its powers and duties, and for other purposes,' and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of section 3 of an act of congress known as the Clayton Act."

By agreement between the parties the Commission filed a transcript of the entire record in the proceeding before it. This court is given power by the act to affirm, modify or set aside such an order, the Commission's findings of fact to be conclusive if supported by testimony.

There is testimony to support the findings of fact and therefore the question before us is whether they do support the Commission's conclusion of law that the method of competition forbidden is unfair within the meaning of section 5 of the act of September 26, 1914.

It seems to us that unfair methods of competition between individuals are not contemplated by the act. Congress could not have intended to submit to the determination of the Commission such questions as whether a person, partnership, or corporation had treated or bribed the employees of a competitor for the purpose of inducing them to betray their employer. We think the unfair methods, though not restricted to such as violate the anti-trusts acts, must be at least such as are unfair to the public generally. It seems to us that section 5 is intended to provide a method of preventing practices un-

fair to the general public and very particularly such as if not prevented will grow so large as to lessen competition and create monopolies in violation of the anti-trust acts. Such a preliminary inquiry and determination constitutes a most important supplement in carrying out the public policy which those acts are intended to vindicate. This view is confirmed by the language of the section:

"Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall ap-
1060 pear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and a place therein fixed at least thirty days after the service of said complaint."

No authority is given to any individual to present his grievances and the Commission is to interpose only in the interest of the public.

That the Commission did not find sufficient proof to sustain the second count in the complaint, viz., that the method of the respondent found to be unfair violated section 3 of the act of October 15, 1914, known as the Clayton Act, which makes unlawful any condition, agreement, or understanding that may lessen competition or tend to create a monopoly shows that the method found to be unfair must have been unfair in certain individual transactions. And we discover no evidence to support the finding in paragraph two that the respondents "adopted and practised the policy or refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging." It is the natural and prevailing custom in the trade to sell ties and bagging together, just as one witness testified it is to sell cups and saucers together. Such evidence as there is of a refusal to sell is a refusal to sell at all to certain persons with whom the respondents had previous unsatisfactory relations and a refusal to sell ties without bagging at the opening of the market in 1916 and 1917 when there was fear that owing to the scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by speculators creating a corner in ties. The evidence is that with these exceptions the respondents sold ties without any restrictions to all who wanted to buy and indeed made extraordinary efforts to induce the manufacturers of ties to increase their output so that all legitimate dealers and all cotton rais-
ers should get enough ties and bagging at reasonable rates to
1061 market their cotton. It is only these exceptional and individual cases, which established no general practice affecting the public, that can sustain the findings in paragraph four.

Counsel for the Commission calls our attention to the opinion of the Circuit Court of Appeals for the Seventh Circuit, not yet reported, Sears Roebuck & Company, petitioners, against Federal Trade Commission, respondent. The practice there prohibited as unfair

was extensive advertising containing false and misleading statements calculated to deceive all purchasers and to discredit all competitors. It was clearly a method unfair to the public generally.

As we think there is no evidence to support any general practice of the respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of the American Manufacturing Company's bagging and that the Commission has no jurisdiction to determine the merits of specific individual grievances, the order is reversed.

1062 At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court rooms in the post-office building in the city of New York on the 24th day of May, one thousand nine hundred and nineteen.

Present: Hon. Henry G. Ward, Hon. Charles M. Hough, Hon. Martin T. Manton, circuit judges.

WARREN, JONES & GRATZ, BY ANDERSON GRATZ, petitioner,
v.
FEDERAL TRADE COMMISSION, respondent.

Petition to review order of the Federal Trade Commission.

This cause came on to be heard on the transcript of record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said Federal Trade Commission be, and it is hereby, reversed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

H. G. W.
C. M. H.

1063 (Endorsed:) United States Circuit Court of Appeals Second Circuit. Warren, Jones & Gratz v. Federal Trade Commission. Order for mandate. United States Circuit Court of Appeals Second Circuit. Filed May 26, 1919. William Parkin, clerk.

1064 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages contain a true and complete transcript of the record and proceedings had in said court in the matter of Warren, Jones & Gratz, by Anderson Gratz, petitioner, against Federal Trade Commission, respondent, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the Southern District of New York, in the Second Circuit, this 5th day of August, in the year of our Lord one thousand nine hundred and nineteen.

[SEAL.] WM. PARKIN, *Clerk.*

483 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:

Being informed that there is now pending before you a suit in which Warren, Jones & Gratz, by Anderson Gratz, are petitioners, and Federal Trade Commission is respondent, No. 236, October term, 1918, which suit was removed into the said Circuit Court of Appeals by virture of a petition to review an order of the Federal Trade Commission, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme
484 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of October, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

485 (Endorsed:) File No. 27247. Supreme Court of the United States, No. 492, October term, 1919. Federal Trade Commission vs. Anderson Gratz and Benjamin Gratz, copartners, etc. Writ of certiorari.

486 In the Supreme Court of th United States, October term, 1919.

FEDERAL TRADE COMMISSION, PETITIONER,
v.
ANDERSON GRATZ, *et al.*
} No. 492.

Stipulation as to return to writ of certiorari.

It is herby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Second Circuit to the writ of certiorari granted therein.

ALEX. C. KING,
Solicitor General.
CLAUDE R. PORTER,
Chief Counsel, Federal Trade Commission.
THOMAS F. MAGNER,
Counsel for Respondent.

OCTOBER, 1919.

487 *To the honorable the Supreme Court of the United States, greeting:*

The record and all proceedings whereof mention is within made, having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated New York, November 17, 1919.

WM. PARKIN,
Clerk of the United States
Circuit Court of Appeals
for the Second Circuit.

488

(Endorsed:) 492–27247. United States Circuit Court of Appeals, Second Circuit. Federal Trade Commission v. Warren, Jones & Gratz. Return to certiorari, office of the clerk Supreme Court U. S. Received Nov. 22, 1919.

489

(Endorsed:) File No. 27247. Supreme Court U. S. October term, 1919. Term No. 492. Federal Trade Commission, petitioner, vs. Anderson Gratz et al. Writ of certiorari and return. Filed Nov. 22, 1919.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

FEDERAL TRADE COMMISSION, PETITIONER,
v.
ANDERSON GRATZ ET AL. } No. 492.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

MOTION OF PETITIONER TO ADVANCE.

Comes now the Solicitor General on behalf of the Federal Trade Commission, petitioner herein, and respectively moves the advancement of the above-entitled cause for hearing during the present term.

The writ of certiorari herein brings up for review a judgment of the Circuit Court of Appeals for the Second Circuit reversing an order of the Federal Trade Commission requiring the respondents to cease and desist from certain alleged unfair methods of competition against other distributors and manufacturers of jute and other bagging used for the covering of bales of cotton, in violation of Section 5 of the Act creating the Commission and defining its powers (Act of Sept. 26, 1914, 38 Stat. 717, 719). The Commission found as a matter of fact that respondents had adopted and practiced the policy of refusing to sell steel ties for the binding of cotton bales, of which they were also selling and distributing agents, unless would-be purchasers would also buy from

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them jute bagging for a corresponding number of bales, and, further, that because of the dominating and controlling position occupied by respondents in the sale and distribution of such ties it was possible for them to force such would-be purchasers to buy from them bagging as aforesaid. The Act of September 26, 1914, *supra*, provides that findings of fact of the Commission, if supported by testimony, shall be conclusive on review of the Commission's orders in the Circuit Court of Appeals. While the court below found that there was testimony supporting the findings, it nevertheless went behind said findings, examined the evidence, and arrived at the conclusion that the evidence did not support the findings.

The question of the power of the Circuit Court of Appeals to go behind the Commission's findings of fact where there is supporting testimony, notwithstanding the provisions of the statute to the contrary, is one of great importance to the Commission, affecting every case brought to review its rulings.

It is also contended that the decision of the court below is in conflict with that of the Circuit Court of Appeals for the Seventh Circuit in the case of *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307.

Notice of this motion has been served on opposing counsel.

ALEX. C. KING,
Solicitor General.

JANUARY, 1920.

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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

FEDERAL TRADE COMMISSION, Petitioner,

v.

ANDERSON GRATZ AND BENJAMIN GRATZ, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and Charles O. Elmer, Respondents.

No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT.

The Solicitor General and the Chief Counsel of the Federal Trade Commission, on behalf of the Commission, pray that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit rendered in the above entitled case on the 14th day of May, 1919, which judgment set aside an order of the Federal Trade Commission adverse to the respondents.

The Federal Trade Commission filed a complaint against the defendants named above, calling on them to show cause why they should not be required to

desist from certain unfair methods of competition against other manufacturers and distributors of jute bagging, sugar bag cloth and rewoven second-hand bagging.

On the hearing before the Commission the facts appeared as follows:

Respondents, Warren, Jones & Gratz have their principal office and place of business in the City of St. Louis, Mo. (Findings, Par. 1, Appendix I, p. 23). Respondents, P. P. Williams & Company, are a copartnership with principal place of business at Vicksburg, Miss., and respondent, C. O. Elmer, has his place of business in New Orleans, La. All are engaged in interstate commerce in the United States in the sale and distribution of steel ties used for the binding of bales of cotton and jute bagging used for covering the bales. Williams & Company and Elmer are the general selling and distributing agents for the steel ties manufactured by the Carnegie Steel Company, amounting to 75 per cent of all those used in the cotton baling business in the Southern States, and are the general selling and distributing agents of the American Manufacturing Company which produces 45 per cent of all the jute bagging for said purposes. The firm of Mente & Company of New York City and New Orleans distributes material known as sugar bag cloth in the cotton growing states, which is used for wrapping cotton bales. The Carolina Bagging Company of North Carolina sells and distributes throughout the cotton growing states the

material known as rewoven bagging which is also sold by other corporations.

Warren, Jones & Gratz and the other respondents (Findings, Par. 2, Appendix I, p. 24) have within the last three years adopted and practiced the policy of refusing to sell steel ties to those dealing with them unless they also purchased a corresponding amount of jute bagging. The Carnegie Steel Company dominates the cotton tie situation in the United States to such a degree (Findings, Par. 3, Appendix I, p. 25) that it can fix and control the price of ties throughout the United States. Ludlow Manufacturing Association of Boston, Mass., manufacture and sell jute bagging, amounting to about 20 per cent of the amount used, and there is also secondhand bagging, amounting to 35 per cent of the total, all of which are in demand in the Southern States. Respondents in many instances refused to sell to purchasers ties unless they bought a corresponding amount of bagging, and purchasers were compelled to buy bagging in order to get ties (Findings, Par. 4, Appendix I, p. 26).

The Commission found that the refusal to sell steel ties to purchasers unless they bought jute bagging was an unfair method of competition in interstate commerce against other manufacturers, dealers and distributors of jute bagging, sugar-bag cloth, or rewoven secondhand bagging in violation of the provisions of Section 5 of an act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and

duties, and for other purposes" (38 Stat., Chap. 311, p. 719), and ordered the respondents to cease and desist from the said policies and practices.

An appeal was taken to the United States Circuit Court of Appeals for the Second Circuit under the Federal Trade Commission Act.

That statute provides that the findings of fact of the Commission are binding on the court if there is any evidence to support them.

That court held:

> The Commission's material findings of fact and its conclusions of law are as follows:
>
> "*Paragraph 2:* That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging * * *."
>
> "*Paragraph 4:* * * * The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties also to buy from them bagging manufactured by the American Manufacturing Company and, in many instances,

said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were often-times compelled to buy bagging manufactured by the American Manufacturing Company, from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

CONCLUSIONS OF LAW.

That the methods of competition set forth in the foregoing Findings as to the Facts, in Paragraphs 1, 2, 3, and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers, and distributors of jute bagging and against other dealers and distributors in the material known as sugar bag cloth, and against manufacturers, dealers and distributors of the bagging known as rewoven bagging and second-hand bagging, in violation of the provisions of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of Section 3 of An Act of Congress known as the Clayton Act.

The court also holds:

There is testimony to support the findings of fact, and therefore the question before us is whether they do support the Commission's

> conclusion of law that the method of competition *forbidden is unfair* within the meaning of Section 5 of the Act of September 26, 1914.

The court, however, concludes:

> that unfair methods of competition between individuals are not contemplated by the Act. * * * We think the unfair methods, though not restricted to such as violate the Anti-Trust Acts, must be at least such as are unfair to the public generally. It seems to us that Section 5 is intended to provide a method of preventing practices unfair to the general public and very particularly such as if not prevented will grow so large as to lessen competition and create monopolies in violation of the Anti-Trust Acts.

The court finds, as the Commission found, that the method of respondents did not violate Section 3 of the Clayton Act, "the method found to be unfair must have been unfair in certain individual transactions," and the court discovers no evidence to support the finding in paragraph 2 of Findings of Facts, that respondents adopted and practiced the policy of refusing to sell ties to merchants and dealers wishing to buy them unless they would buy a corresponding amount of jute bagging.

QUESTIONS INVOLVED.

It is urged that the petition for certiorari should be granted:

First—Because the question of the right of the court to set aside the Findings of Fact while conceding that "There is evidence to support the findings of

fact," is of great and general importance, applicable to all cases brought to review the Commission's rulings.

Second—Because the court, while holding said Findings of Fact sustained by evidence, in effect reverses said Finding of Fact.

Third—Because the court ignores the Finding of Fact No. 4 and seeks to reduce it to a finding of merely individual transactions.

Fourth—Because the court erred in holding that the order of the Commission could not be made upon proof of individual transactions. This in effect holds that conduct illegal if applied to all, can not be forbidden if applied to only some transactions though numerous, and that proof of exceptions to illegal conduct will render the proof insufficient as matter of law from which the Commission can find a method or practice.

Fifth—Because there is a conflict between the decision rendered in this case and that rendered by the United States Circuit Court of Appeals for the Seventh Circuit in the case of Sears, Roebuck & Co. *v.* Federal Trade Commission, decided April 29, 1919, not yet reported. (Appendix III, p. 36.)

Wherefore it is respectfully submitted that the certiorari be granted.

ALEX. C. KING,
Solicitor General.
CLAUDE R. PORTER,
Chief Counsel for the
Federal Trade Commission.

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BRIEF IN SUPPORT OF PETITION.

FIRST.

The Court of Appeals exceeded its jurisdiction.

The Federal Trade Commission was given jurisdiction by Congress over unfair methods of competition in interstate commerce in the following language:

> Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein at least thirty days after the service of said complaint. (Section 5.)

If, upon hearing, the Commission is of the opinion that the method of competition in question is one that is prohibited by this Act, it makes its findings upon which an order is based to "cease and desist from such method of competition" (Section 5). "The findings of the Commission as to the facts, *if supported by testimony*, shall in like manner be *conclusive*" (Section 5). In the instant case the court said in its opinion under the subdivision "Conclusions of Law" that "*there is testimony to support the Findings of Fact*, and therefore, the question before us is whether they

do support the Commission's Conclusions of Law that the method of competition is unfair within the meaning of Section 5 of the Act of September 26, 1914."

Paragraph 2 of the Findings of Fact is as follows:

> That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging * * *.

Paragraph 4 of the Findings of Fact is as follows:

> * * * The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Company and, in many instances, said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were oftentimes compelled to buy bagging manufactured by the American Manufacturing Company, from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

It is maintained by the Commission that under Section 5, since the said paragraphs 2 and 4 of the findings were supported by testimony as conceded by the court, the latter had no power to go behind said findings, weigh the evidence, and overthrow the Commission's findings. Yet in a subsequent paragraph of its opinion, it said:

> *And we discover no evidence* to support the findings in Paragraph 2, etc. * * * Such evidence as there is of a refusal to sell is a refusal to sell at all to certain persons with whom the respondents had previous unsatisfactory relations and a refusal to sell ties without bagging at the opening of the market in 1916 and 1917 when there was fear that owing to scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by speculators creating a corner in ties. *The evidence is that with these exceptions the respondents sold ties without any restrictions to all who wanted to buy* and indeed made extraordinary efforts to induce the manufacturers of ties to increase their output so that all legitimate dealers and all cotton raisers should get enough ties and bagging at reasonable rates to market their cotton. *It is only these exceptional and individual cases, which established no general practice affecting the public, that can sustain the findings in Paragraph 4.*

The mere placing of the above paragraph in juxtaposition with the early part of the opinion wherein it

is said that "There is testimony to support the Findings of Fact" presents a contradiction and an ambiguity. In the first instance the court recognizes that it is foreclosed by the statute from rejecting the Commission's findings when they are supported by testimony, but subsequently reviews the Commission's conclusion of fact as if it were a conclusion of law and rejects it. The statute grants to the Commission powers similar to that of a jury passing upon a question of fact. The Commission receives the evidence and argument as a jury and renders its verdict as such in the form of an order based upon its findings. Undoubtedly it was for this reason that Congress did not state specifically the amount of evidence that should make the Commission's decision on a finding of fact binding, but did make it conclusive upon the court when supported by testimony.

Reverting to findings 2 and 4, the Circuit Court of Appeals is foreclosed from denying that respondents adopted a policy of refusing to sell to those wishing to buy from them unless they bought both steel ties and jute bagging and that respondents occupied such a dominating and controlling position in the sale and distribution of ties that they could and often did compel the purchaser to also buy bagging.

It is therefore maintained that the court exceeded its jurisdiction in overruling the Commission's order to cease and desist.

SECOND.

Respondents practiced a policy of refusing to sell ties unless the purchaser bought jute bagging, in a manner affecting the public.

The statement of the court that it discovered no evidence to support the findings in Paragraphs 2 and 4 that the respondents adopted and practiced a certain policy of refusing to sell and that there was no general practice affecting the public is in conflict with the evidence. The Commission found, and it is apparently not disputed, that respondents were the sole agents for distributing the entire output of steel ties (Findings, Par. 3, Appendix 1, p. 25) manufactured by the Carnegie Steel Company amounting annually to 75 per cent of all the cotton ties used in the United States, and also were the general agents and distributors of jute bagging manufactured by the American Manufacturing Company amounting to 45 per cent of all the jute bagging required. Moreover, respondents refused to sell ties unless the purchaser bought a corresponding amount of bagging from them (pp. 509, 511, 572 of the testimony). Yet the court bases its whole decision on the ground that there was no general practice established affecting the public. Were not the entire cotton raising public and the competitors and distributors of the 55 per cent of the cotton bale bagging in competition with respondents interested in a proceeding looking toward the abolition of the practice of respondents' compelling the purchasers of ties to purchase respondents' particular bagging, when respondents controlled 45 per cent

of the entire amount used? Would not such a practice as shown here, if not prevented, lessen competition, and hence affect the public? Not only would those who were buying and selling the 55 per cent of the jute bagging be affected, but also the entire cotton growing public, since respondents had the power to dictate the price of ties. If from these facts it appeared to the Commission "that a proceeding by it in respect thereof would be to the interest of the public" (Section 5), and upon hearing had, the allegations of the complaint were supported by evidence, is it for the Circuit Court of Appeals to reverse the Commission's order?

That respondents exercised a dominating and controlling position and refused to sell ties unless the purchaser bought bagging is revealed from the following evidence:

> Letter of June 24, 1916, from respondents to Messrs. P. P. Williams & Co., their selling and distributing agents, in part as follows:
>
> "Do not sell any ties to anyone without bagging to match, as we do not propose to furnish buyers of sugar bags any ties if we can help it.
>
> "You will have to be very careful about sales, as there is a disposition on the part of buyers to overbuy, and as the supply of bagging and ties this year will be limited, we will have to be very careful not to sell too much to any one party at these opening prices. In this way we may possibly be able to control supply and prices to some extent (p. 509 of testimony).

"These ties to be sold in every instance only to people who buy at least 30 yards of bagging with each bundle of ties for the same shipment as the ties.

* * * * *

"You must be very careful and not let people like Goyer pick you up on ties without a proportionate quantity of bagging.

"As to bagging, do not sell over one million yards without further instructions from us as there is strong probability of an early advance in both bagging and ties (p. 511 of testimony).

"Last year we sold the Goyer Company a round lot of ties. Please do not sell them any ties this year except with a proportionate quantity of bagging, as every bundle of ties we see in sight will be needed to go with our bagging, and we do not want to supply people with ties who are using bagging purchased of others. Therefore, we did not write Goyer offering them any ties except with bagging" (p. 512 of testimony).

One G. O. Korndorffer testified as follows (pp. 9–10 of testimony):

"Q. How much bagging were you required to buy in order to get the 5,000 bundles of ties?

"A. 100,000 yards of bagging.

"Q. At that time state whether or not you were already supplied with bagging?

"A. We were, sir.

"Q. What kind of bagging did you have on hand?

"A. Ludlow bagging, manufactured in Boston, Mass."

One S. H. Lowenburg testified as follows (pp. 59–60 of the testimony):

"Q. You did not know any people at all from whom you were able to purchase ties except C. O. Elmer & Co., and P. P. Williams & Co., of Vicksburg?

"A. That is all; that is, at the standard price, where we would not have to pay a margin over the price made on ties. The tie business—I do not know whether you want this in evidence or not—but up to last year they required you to buy 3,000 bundles of ties with 100,000 yards of bagging, to get the benefit of a 4-cent allowance on ties. I do not think it was applicable this year. But up to this year (1917) it was my understanding they required that much purchase of ties with 100,000 yards of bagging in order to get a 4-cent rebate.

"Q. On the bagging or the ties?

"A. On the ties.

"Q. 4 cents a bundle?

"A. Yes, sir; 4 cents a bundle.

"Q. Who required that—who made that kind of a proposition?

"A. I think that was done—most of our business was done through O. Elmer & Co."

Charles M. Platter, of Boren & Stewart Company, Dallas, Texas, testified that he re-

ceived the following telegram (p. 102 of testimony):

"St. Louis, Mo., *June 26, 1916.*

Boren and Stewart Co.,

Dallas.

Telegram received; will book your order for one hundred thousand yards bagging with thirty-three hundred bundles ties to match, but can not sell you six thousand bundles in addition, as our supply of ties is limited we are not selling ties to any one except with proportional amount bagging answer if satisfactory.

Warren, Jones and Gratz."

Ed. Brin, of Terrell, Texas, testified (p. 238 of testimony) that on June 24, 1916, his company received the following letter:

"The Brin Store,

Terrell, Texas.

Gentlemen: Yours of the 24th.

While we shall make our opening prices on bagging and ties next Monday, we can not at this time offer you any ties except with a proportionate quantity of bagging. In other words, if you buy from us 30,000 yards of bagging, we will sell you 1,000 bundles of ties. It is necessary to handle our business in this way owing to our small supply of ties.

Yours, truly,

Warren, Jones & Gratz."

The following witnesses testified in substance that they could not buy ties without also purchasing bagging from respondents:

W. F. Bridewell (p. 138a of testimony).

G. H. Towler (p. 154 of testimony).

August Wisrodt (p. 168 of testimony).

W. M. Foster (p. 177 of testimony).

J. C. Werner, of Mente & Co. (pp. 269–270 of testimony).

Paul Kling (pp. 330–331 of testimony).

If the foregoing evidence is not sufficient to establish not only that there was a general policy practiced by respondents, but that the public was concerned, then the Federal Trade Commission is at a loss to know when a case has been made out. It is deeply concerned with the interpretation by the Circuit Court of Appeals, for if the decision of that court were to be affirmed, the Commission would be bound to continue its investigations and hearings until time and expense would be prohibitive and its processes without benefit to the Government or the people. It certainly can not be said that this does not furnish such evidence to sustain the findings of the commission as to make them binding on the Court of Appeals.

THIRD.

The decision of the Circuit Court of Appeals is in conflict with the decision of the Seventh Circuit in the case of Sears, Roebuck & Company, petitioner, versus the Federal Trade Commission, respondent (October term, 1918, April session, April 29, 1919).

The lower court's attention was called to the Sears, Roebuck & Company case, but it declared that "The practice there prohibited as unfair was extensive advertising containing false and misleading statements calculated to deceive all purchasers and to

discredit all competitors. It was clearly a method unfair to the public generally." The line of demarcation which the court draws is apparently that the advertisements of the Sears, Roebuck & Company were reaching the public generally and hence there was a public interest involved, whereas in the case at bar no such showing was made and hence there was no public interest involved. It is a very doubtful question as to whether the advertisements of Sears, Roebuck & Company were reaching as large a public and affecting as many people as were affected by the respondents controlling the sale and distribution of 75 per cent of the steel ties and 45 per cent of the jute bagging used in the entire cotton industry of the Southern States. At best the question is doubtful, and if one were to hazard a guess the preponderance might lie very much in favor of a greater number being affected by the control of the steel ties and jute bagging. The court has also said that "No authority is given any individual to present his grievances, and the Commission is to interpose only in the interest of the public." Presumably the court believes no action should be taken by the Commission in a matter of interest to the public unless initiated by the complaint of some vast group of individuals. If such were the case, the Commission would practically cease to function, for the overwhelming preponderance of cases growing out of the more than thousand applications for complaints already passed upon by the Commission, as shown by its Annual Report for the

year 1918 and 1919, now in preparation, shows that they were initiated by individuals. The Commission has been unable to find anything in the law that forbids it to act upon the complaint of an individual if it appears that there is disclosed a case of unfair competition affecting the public. Moreover, Judge Baker in the Sears, Roebuck & Company case declared that:

> The Commissioners are not required to aver and prove *that any competitor has been damaged or that any purchaser has been deceived.* The Commissioners, representing the Government as parens patriæ, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop *all those trade practices that have a capacity or a tendency to injure competitors directly* or through deception of purchasers quite irrespective of whether the specific practices in question have yet been denounced in common law cases. [Italics ours.]

The language of Chief Justice Fuller in the case of Loewe *v.* Lawlor (208 U. S. 274, 294–295) coincides with that of Judge Baker wherein it states that:

> "* * * and there is no doubt that (to quote from the well-known work of Chief Justice Erle on Trade Unions) 'at common law every person has individually, and the public also has collectively, a right to require that the course of trade should be kept free from unreasonable obstruction.'"

If the Commission has the jurisdiction to "stop all those trade practices that have a capacity or a tend-

ency to injure competitors directly," then surely it had the authority to order the respondents in the instant case to cease where they held a dominating position and refused to sell steel ties except where a corresponding amount of jute bagging was bought. The capacity or tendency to injure the competitor who has only jute bagging to sell, which might be of a better or equal quality, but which would be lost in competition with respondents because of respondents' ability to sell owing to the control of steel ties, is so obvious that it does not need elucidation. Such an actual power must necessarily restrain trade and create a situation in which public interest is involved.

FOURTH.

The court exceeded its jurisdiction in setting aside the Commission's order on the ground that there was no general practice affecting the public established.

The reversal of the Commission's order by the lower tribunal is based upon the ground that there was no general practice affecting the public established by the Commission. This being the sole question, had the court the right to review the Commission's decision? An analysis of Section 5 of the Federal Trade Commission Act shows that the only substantive law therein is as follows: "That unfair methods of competition are hereby declared unlawful." The remainder of the section contains the procedure and is administrative in character. The Commission functions administratively under this procedure whenever it "shall have reason to believe" certain conditions

exist and "if it shall appear to the Commission" that a proceeding "would be to the interest of the public." The court states that "A general practice affecting the public was not shown." It concedes that there were exceptional and individual cases.

The substantive law does not mention a "general practice" as one of the requisites of the definition of "unfair methods of competition." Had the court the right to read such a phrase into the substantive law? Judge Baker in the case of Sears, Roebuck & Co. *v.* the Federal Trade Commission, in the Circuit Court of Appeals for the Seventh Circuit, decided April 29, 1919, says that the Commission is to stop "all those trade practices that have a capacity or tendency to injure competitors." This language excludes the element which the Second Circuit reads into the substantive law and leaves only the question as to whether the lower tribunal can review an order of the Commission where the only ground is a lack of public interest. The matter of public interest, however, comes within the language of Section 5 prescribing the administrative function of the Commission, and the decisions seem to be very clear that the actions of executive departments can not be set aside where the matter is administrative in character.

Penn R. R. Co. *v.* International Coal Mining Co., 230 U. S., 184, 196.

Mitchell Coal & Coke Co. *v.* Penn R. R. Co., 230 U. S., 247, 257.

CONCLUSION.

Wherefore it is respectfully submitted that the petition for writ of certiorari to review the decision of the Circuit Court of Appeals for the Second Circuit be granted.

ALEX C. KING,
Solicitor General.
CLAUDE R. PORTER,
Chief Counsel for Federal Trade Commission.
HUSTON THOMPSON,
Federal Trade Commissioner, of Counsel.

APPENDIX I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW BY COMMISSION.

FINDINGS OF FACT.

Paragraph 1.—That Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, one of the respondents, is a copartnership whose principal office and place of business is in the city of St. Louis, State of Missouri; that P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, is a copartnership with its principal office and place of business in the city of Vicksburg, State of Mississippi; and that the other respondent, C. O. Elmer, has his principal office and place of business in the city of New Orleans, State of Louisiana; that all of said respondents are now, and were at all times hereinafter mentioned, engaged in commerce among the several States and Territories of the United States in the sale and distribution of steel ties, manufactured and used for the purpose of binding bales of cotton, and jute bagging, manufactured and used for the purpose of covering and wrapping bales of cotton; and that the respondents, P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer were, and are general selling and distributing agents for the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and

style of Warren, Jones & Gratz, in the sale and distribution of said articles of commerce; and that the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the general selling and distributing agents for the Carnegie Steel Company located at Pittsburgh, Pa., in the sale and distribution of steel ties manufactured and used for the purpose aforesaid; and that the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the general selling and distributing agents of the American Manufacturing Company, the principal office of which is in the city of Brooklyn, State of New York, for the sale and distribution throughout the States, commonly known as cotton States, of jute bagging manufactured and used for the purpose aforesaid; and that Mente & Company with offices in the Cities of New York and New Orleans, and many other persons sell and distribute a material known as sugar bag cloth in interstate commerce throughout the cotton growing States of this country, which material is used for the purpose of wrapping bales of cotton; and that the Carolina Bagging Company, located at Henderson, N. C., manufactures, sells and distributes in interstate commerce, throughout the cotton growing States of this country, what is known as rewoven bagging, and that said material known as rewoven bagging is manufactured and sold by other corporations and copartnerships in interstate commerce.

Paragraph 2.—That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams,

W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wished to buy steel ties from the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, either through themselves or their general agents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company and C. O. Elmer, to also buy at the same time from said respondents a corresponding amount of American bagging manufactured by the American Manufacturing Company, of which Manufacturing company the the said respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were the sole selling and distributing agents in all the territory west of the Mississippi River, where cotton is grown and where bagging and ties are sold for the purpose of covering and wrapping bales of cotton.

Paragraph 3.—That the said respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the sole selling and distributing agents of the Carnegie Steel Company of Pittsburgh, Pa., in the sale and distribution of its entire output of steel ties made and sold for the purpose of binding bales of cotton; and that the Carnegie Steel Company

manufactures and sells annually about 75 per cent of all the steel ties manufactured for such purpose in the United States; and that the Carnegie Steel Company sufficiently dominates the cotton tie situation in the United States to enable it to fix and control the price of such ties throughout the country; and that about 45 per cent of the jute bagging required to cover the cotton crop of the Southern States is annually manufactured by the American Manufacturing Company and about 20 per cent by the Ludlow Manufacturing Associates of Boston, Mass., and the remaining requirement for baling the cotton crop, viz, about 35 per cent is made up by the use of second-hand bagging and a material called sugar bag cloth. This cloth, as well as the second-hand or rewoven bagging, is in considerable demand by cotton balers and is sold and distributed by dealers throughout the Southern States in active competition with the jute bagging manufactured by the American Manufacturing Company and sold and distributed by the said respondents.

Paragraph 4.—That a great many merchants, jobbers, and dealers in bagging and ties throughout the cotton-growing States were many times unable to procure ties from any other firm except Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, or their said agents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, and that the said respondents sold and distributed such a large proportion of the entire amount of such ties manufactured and sold in the entire cotton-growing section of the country, that they, the said

respondents, had what amounted to a monopoly of the cotton tie business of the country, controlling and distributing such a large proportion of the entire output of cotton ties that cotton growers found it impossible to bind the cotton grown and produced in the Southern States without applying to and purchasing from the said respondents and their agents almost the entire output of such ties manufactured by the Carnegie Steel Company. The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Company and, in many instances, said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were often times compelled to buy bagging manufactured by the American Manufacturing Company, from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

CONCLUSIONS OF LAW.

That the methods of competition set forth in the foregoing Findings as to the Facts, in paragraphs 1, 2, 3 and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competiton in interstate commerce, against other manufacturers, dealers and distributors of jute bagging, and against other dealers and distributors in the material known as sugar bag cloth, and against manufacturers, dealers, and distributors of the bagging known as rewoven bagging and second-hand bagging, in violation of the provisions of Section 5

of an Act of Congress, approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to Define its Powers and Duties, and For Other Purposes;" and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of Section 3 of an act of Congress known as the Clayton Act.

[SEAL.]

WILLIAM B. COLVER, *Chairman.*
JOHN FRANKLIN FORT,
VICTOR MURDOCK,
Commissioners.

APPENDIX II.

OPINION OF THE COURT BELOW.

Before Ward, Hough and Manton, Circuit Judges.

T. F. Magner, for petitioner.

John Walsh, for respondent.

Ward, Circuit Judge:

This is a petition of Anderson Gratz, a member of the firm of Warren, Jones & Gratz, under Section 5 of the Act of September 26, 1914, 38 Stat. L., 730, creating the Federal Trade Commission to review the following order of the Commission:

> Therefore, It Is Ordered, that the respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, their officers and agents, cease and desist from requiring purchasers of cotton ties to also buy, or agree to buy, a proportionate amount of American Manufacturing Company's bagging and further that the respondents cease and desist from refusing to sell corresponding amounts of American Manufacturing Company's bagging, or any amount of cotton bagging of any kind.
>
> By the Commission,
>
> [SEAL.] L. L. Bracken, *Secretary.*

If Anderson Gratz has not sufficient standing to file this petition, counsel for the Commission has very fairly waived the objection and invited the court to dispose of the questions raised.

The first count of the complaint served on the respondents, which is the only one involved, is as follows:

Paragraph 1: That the respondents, Anderson Gratz and Benjamin Gratz, are copartners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business in the City of St. Louis, and State of Missouri, and are engaged in the business of selling, in interstate commerce, either directly to the trade, or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Company of Pittsburgh, Pa., and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Company, of St. Louis, Mo.

Paragraph 2: That the respondents, P. P. Williams, W. H. Fitzhugh, and Alex. Fitzhugh, are copartners, doing business under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the City of Vicksburg, and State of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the City of New Orleans, and State of Louisiana, are the selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginners, and farmers.

Paragraph 3: That with the purpose, intent, and effect of discouraging and stifling competition in interstate commerce in the

sale of such bagging, all of the respondents do now refuse, and for more than a year last past have refused, to sell any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties proposed to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging.

The respondents filed an answer admitting the fact stated in Paragraphs 1 and 2, but denying the facts stated and the conclusion of law contained in Paragraph 3. They appeared and offered testimony before the Commission.

The Commission's material findings of fact and its conclusions of law are as follows:

Paragraph 2: That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging * * *.

Paragraph 4: * * * The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties also to buy from them bagging manufactured by the American Manufacturing Company and, in many instances, said

respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were often-times compelled to buy bagging manufactured by the American Manufacturing Company, from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

CONCLUSIONS OF LAW.

That the methods of competition set forth in the foregoing Findings as to the Facts, in Paragraphs 1, 2, 3, and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers and distributors of jute bagging and against other dealers and distributors in the material known as sugar bag cloth, and against manufacturers, dealers and distributors of the bagging known as rewoven bagging and second-hand bagging, in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of section 3 of an act of Congress known as the Clayton Act.

By agreement between the parties the Commission filed a transcript of the entire record in the proceeding before it. This court is given power by the Act to affirm, modify or set aside such an order, the Commission's findings of fact to be conclusive if supported by testimony.

There is testimony to support the findings of fact, and therefore the question before us is whether they

do support the Commission's conclusion of law that the method of competition forbidden is unfair within the meaning of Section 5 of the Act of September 26, 1914.

It seems to us that unfair methods of competition between individuals are not contemplated by the act. Congress could not have intended to submit to the determination of the Commission such questions as whether a person, partnership or corporation had treated or bribed the employees of a competitor for the purpose of inducing them to betray their employer. We think the unfair methods, though not restricted to such as violate the Anti-Trust Acts, must be at least such as are unfair to the public generally. It seems to us that Section 5 is intended to provide a method of preventing practices unfair to the general public, and very particularly such as if not prevented will grow so large as to lessen competition and create monopolies in violation of the Anti-Trust Acts. Such a preliminary inquiry and determination constitutes a most important supplement in carrying out the public policy which those acts are intended to vindicate. This view is confirmed by the language of the section:

> Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint.

No authority is given to any individual to present his grievances and the Commission is to interpose only in the interest of the public.

That the Commission did not find sufficient proof to sustain the second count in the complaint, viz., that the method of the respondents found to be unfair violated Section 3 of the Act of October 15, 1914, known as the Clayton Act, which makes unlawful any condition, agreement, or understanding that may lessen competition or tend to create a monopoly shows that the method found to be unfair must have been unfair in certain individual transactions. And we discover no evidence to support the finding in Paragraph 2 that the respondents "adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging." It is the natural and prevailing custom in the trade to sell ties and bagging together, just as one witness testified it is to sell cups and saucers together. Such evidence as there is of a refusal to sell is a refusal to sell at all to certain persons with whom the respondents had previous unsatisfactory relations and a refusal to sell ties without bagging at the opening of the market in 1916 and 1917 when there was fear that owing to scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by speculators creating a corner in ties. The evidence is that with these exceptions the respondents sold ties without any restrictions to all who wanted to buy and indeed make extraordinary efforts to induce the manufacturers of ties

to increase their output so that all legitimate dealers and all cotton raisers should get enough ties and bagging at reasonable rates to market their cotton. It is only these exceptional and individual cases, which established no general practice affecting the public, that can sustain the findings in Paragraph 4.

Counsel for the Commission calls our attention to the opinion of the Circuit Court of Appeals for the Seventh Circuit, not yet reported, Sears, Roebuck & Company, Petitioner, against Federal Trade Commission, Respondent. The practice there prohibited as unfair was extensive advertising containing false and misleading statements calculated to deceive all purchasers and to discredit all competitors. It was clearly a method unfair to the public generally.

As we think there is no evidence to support any general practice of the respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of the American Manufacturing Company's bagging and that the Commission has no jurisdiction to determine the merits of specific individual grievances, the order is reversed.

APPENDIX III.

In the United States Circuit Court of Appeals for the Seventh Circuit.

October Term, 1918. April Session, 1919.

SEARS, ROEBUCK & COMPANY, petitioner, *v.* FEDERAL TRADE COMMISSION, respondent.	Original petition to review order of Federal Trade Commission. No. 2659.

Before Baker and Alschuler, Circuit Judges, and Carpenter, District Judge.

Baker, Circuit Judge, delivered the opinion of the court:

This is an original petition to review an order entered by the respondent, the Federal Trade Commission, against the petitioner, Sears, Roebuck & Company, a corporation, commanding the petitioner to desist from certain unfair methods of competition in commerce. Respondent's order was based on its complaint, filed on February 26, 1918, on the petitioner's answer and on a written stipulation of facts. Procedure before the commission and also before this court on review is prescribed in section 5 of the Act to create a Federal Trade Commission, approved on September 26, 1914. Respondent's authority over the subject-matter of its order is derived from the following provision in the same section: "Unfair methods of competition in commerce are hereby declared unlawful." Section 4 is a dictionary of terms

used in the act. "Commerce" means interstate or foreign commerce, but the general term "unfair methods of competition" is nowhere defined specifically, nor is there a schedule of methods that shall be deemed unfair.

In its complaint respondent averred that petitioner is engaged in interstate and foreign commerce, conducting a "mail-order" business; that petitioner for more than two years last past has practiced unfair methods of competition in commerce by false and misleading advertisements and acts designed to injure and discredit its competitors and to deceive the general public in the following ways:

1. By advertising that petitioner, because of large purchases of sugar and quick disposal of stock, is able to sell sugar at a price lower than others offering sugar for sale;

2. By advertising that petitioner is selling its sugar at a price much lower than that of its competitors, and thereby imputing to its competitors the purpose of charging more than a fair price for their sugar;

3. By selling certain of its merchandise at less than cost on the condition that the customer simultaneously purchase other merchandise at prices which give petitioner a profit on the transaction, without letting the customer know the facts;

4. By advertising that the quality of merchandise sold by its competitors is inferior to that of similar merchandise sold by petitioner, and that petitioner buys certain of its merchandise in markets not accessible to its competitors and is therefore able to give better advantages in quality and price than those offered by its competitors.

Petitioner extensively circulated the following advertisements, among others:

> We can afford to give this guarantee of a "less than wholesale price" because we are among the largest distributors of sugar wholesale or retail in the world. We sell every year thirty-five million pounds of sugar. And, buying in such vast quantities, and buying directly from the refineries, we naturally get our sugar for less money than other dealers.
>
> For instance, every grocer carries granulated sugar in stock, but does he tell you which kind? There are two kinds—granulated cane sugar and granulated beet sugar—and they look exactly alike. Some people prefer the one and some the other. But beet sugar usually costs less than cane sugar, so if you are getting beet sugar you should pay less for it. Do you know which kind you are getting and which you are paying for?
>
> Our teas have a pronounced, yet delicate, tea flavor with an appealing fragrance, because we spare neither time nor expense to get the very best the greatest tea gardens of the world can produce.
>
> First, because of the difficulty of getting in this country the exact character and flavor of certain teas, we do our own importing and critically test every tea. Our representative goes to the various tea-growing countries and makes the selection in person. Then, the greatest care is taken to get only first-crop pickings from upland soil.
>
> Also, by buying direct from the tea gardens, while the crops are being harvested, we are able to have them always perfectly fresh.
>
> It would be natural for you to conclude that all this care in buying and selecting would make our teas very high in price, but in reality

> our prices are unusually low for such high quality. Here is a reason: By buying direct from the tea gardens we cut out the middleman's profit.
>
> Over land and sea, from the greatest coffee regions in the world we bring you the choicest of the crop, and make it possible for you to have that fresh, savory and fragrantly tempting cup of coffee for your breakfast. You see, we buy direct from the best plantations in the world. We get the pick of the crop—upland coffees from rich, healthy soil and growers of unquestioned experience and skill. We buy enormous quantities and pay cash, thus making it possible to offer our customers the very best coffees at very low prices.

Petitioner's sales of sugar during the second half of 1915 amounted to $780,000, on which it lost $196,000. Petitioner used sugar as a "leader" ("You save 2 to 4 cents on every pound"), offering a limited amount at the losing price in connection with a required purchase of other commodities at prices high enough to afford petitioner a satisfactory profit on the transaction as a whole, without letting the customer know that the sugar was being sold on any other basis than that of the other commodities. Petitioner obtained its sugar in the open market from refiners and wholesalers. Competitors got their sugar from the same sources, of the same quality and at the same price. Sugar is a staple in the market. Price concessions upon large purchases are unobtainable. From the facts respecting petitioner's methods of advertising and buying and selling sugar respondent found, and properly so, in our judgment, that petitioner intentionally injured and discredited its competitors by falsely leading the

public to believe that the competitors were unfair dealers in sugar and the other commodities which petitioner was offering in connection with sugar.

Petitioner purchased 75 per cent of its teas from wholesalers and importers in the United States. The remainder it purchased through its representative, Peterson, in Japan; but there was no proof that Peterson made or was qualified to make "selections in person" or "first-crop pickings from upland soil." All of petitioner's coffees were purchased from wholesalers and importers in the United States. Respondent found that petitioner's advertisements of teas and coffees were false and designed to deceive the public and injure competitors.

By the order, issued on June 24, 1918, petitioner was commanded to desist from—

> (1) Circulating throughout the States and Territories of the United States and the District of Columbia catalogues containing advertisements offering for sale sugar, wherein it is falsely represented to its customers or prospective customers of said defendant or to customers of competitors, or to the public generally, or leads them to believe, that because of large purchasing power and quick-moving stock, defendant is able to sell sugar at a price lower than its competitors;
>
> (2) Selling or offering to sell sugar below cost through catalogues circulated throughout the States and Territories of the United States and the District of Columbia among its customers, prospective customers and customers of its competitors;
>
> (3) Circulating throughout the various States and Territories of the United States and the District of Columbia among customers, prospective customers and customers of its com-

petitors, catalogues containing advertisements representing that defendant's competitors do not deal justly, fairly and honestly with their customers;

(4) Circulating throughout the various States and Territories of the United States and the District of Columbia among customers, prospective customers or customers of its competitors, catalogues containing advertisements offering for sale its teas, in which said advertisements it falsely stated that the defendant sends a special representative to Japan, who personally goes into the tea gardens of said country and personally supervises the picking of such teas;

(5) Circulating through the various States and Territories of the United States and the District of Columbia, among customers, prospective customers or customers of its competitors, catalogues containing advertisements offering for sale its coffees, in which it falsely stated that the defendant purchases all of its coffees direct from the best plantations in the world.

I. Petitioner insists that the injunctional order was improvidently issued because, before the complaint was filed and the hearing had, petitioner had discontinued the methods in question and, as stated in its answer, had no intention of resuming them. For example, no sugar offers of the character assailed were made after August, 1917. But respondent was required to find from all the evidence before it what was the real nature of petitioner's attitude. It was permissible for respondent to take judicial notice of the Government's war-time control of sugar sales and consumption. It was also proper to note that petitioner was contending (and still contends) that the

act is void for indefiniteness, that the act is unconstitutional, and that the act, even if valid, under any proper construction has not been infringed by petitioner's practices. In Goshen Mfg. Co. *v.* Myers Mfg. Co., 242 U. S. 202, which was a suit for infringement of a patent, the defendant company averred and introduced evidence to prove that six months before the bill was filed, and with notice to complainant, it had sold its factory, wound up its business, and had no intention of resuming. But throughout the intervening period and also in the answer to the bill the defendant company was attacking the validity of the patent and the right of the complainant to compel desistance. This conduct was held to be such a continuing menace as to justify the maintenance of the bill. So here, no assurance is in sight that petitioner, if it could shake respondent's hand from its shoulder, would not continue its former course.

II. Petitioner urges that the declaration of section 5 must be held void for indefiniteness unless the words "unfair methods of competition" be construed to embrace no more than acts which on September 26, 1914, when Congress spoke, were identifiable as acts of unfair trade then condemned by the common law as expressed in prior cases. But the phrase is no more indefinite than "due process of law." The general idea of that phrase as it appears in constitutions and statutes is quite well known; but we have never encountered what purported to be an all-embracing schedule or found a specific definition that would bar the continuing processes of judicial inclusion and exclusion based upon accumulating experience. If the expression "unfair methods of competition" is too uncertain for use, then under the same condemnation would fall the innumerable statutes

which predicate rights and prohibitions upon "unsound mind," "undue influence," "unfaithfulness," "unfair use," "unfit for cultivation," "unreasonable rate," "unjust discrimination," and the like. This statute is remedial, and orders to desist are civil; but even in criminal law convictions are upheld on statutory prohibitions of "rebates or concessions" or of "schemes to defraud," without any schedule of acts or specific definition of forbidden conduct, thus leaving the courts free to condemn new and ingenious ways that were unknown when the statutes were enacted. Why? Because the general ideas of "dishonesty" and "fraud" are so well, widely, and uniformly understood that the general term "rebates or concessions" and "schemes to defraud" are sufficiently accurate measures of conduct.

On the face of this statute the legislative intent is apparent. The Commissioners are not required to aver and prove that any competitor has been damaged or that any purchaser has been deceived. The Commissioners, representing the Government as parens patriæ, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or a tendency to injure competitors directly or through deception of purchasers, quite irrespective of whether the specific practices in question have yet been denounced in common law cases. But the restraining order of the Commissioners is merely provisional. The trader is entitled to his day in court, and there the same principles and tests that have been applied under the common law or under statutes of the kinds hereinbefore recited are expected by Congress to control.

This prima facie reading of legislative intent is confirmed by reference to committee reports and debates in Congress, wherein is disclosed a refusal to limit the commission and the courts to a prescribed list of specific acts. Cong. Rec., 63rd Cong., 2nd session, pp. 13, 18, 533, 12246. And this interpretation is not affected by the subsequent adoption of the Clayton Act, October 15, 1914, condemning certain specific acts.

III. But such a construction of section 5, according to petitioner's urge, brings about an unconstitutional delegation of legislative and judicial power to the commission. Grants of similar authority to administrative officers and bodies have not been found repugnant to the Constitution. Butterfield *v.* Stranahan, 192 U. S. 470; Union Bridge Co. *v.* United States, 204 U. S. 365; Penn. R. R. Co. *v.* International Coal Co., 230 U. S. 184; National Pole Co. *v.* Chicago & N. W. Ry. Co., 211 Fed. 65.

With the increasing complexity of human activities many situations arise where governmental control can be secured only by the "board" or "commission" form of legislation. In such instances Congress declares the public policy, fixes the general principles that are to control, and charges an administrative body with the duty of ascertaining within particular fields from time to time the facts which bring into play the principles established by Congress. Though the action of the commission in finding the facts and declaring them to be specific offenses of the character embraced within the general definition by Congress may be deemed to be quasi legislative, it is so only in the sense that it converts the actual legislation from a static into a dynamic condition. But

the converter is not the electricity. And though the action of the Commission in ordering desistance may be counted quasi judicial on account of its form, with respect to power it is not judicial, because a judicial determination is only that which is embodied in a judgment or decree of a court and enforceable by execution or other writ of the court.

IV. In the second paragraph of the order petitioner is commanded to cease selling sugar below cost. We find in the statute no intent on the part of Congress, even if it has the power, to restrain an owner of property from selling it at any price that is acceptable to him or from giving it away. But manifestly in making such a sale or gift the owner may put forward representations and commit acts which have a capacity or a tendency to injure or to discredit competitors and to deceive purchasers as to the real character of the transaction. That paragraph should therefore be modified by adding to it "by means of or in connection with the representations prohibited in the first paragraph of this order, or similar representations."

Sufficient appears in this record and in the presentation of the case to warrant us in expressing the belief that petitioner's business standards were at least as high as those generally prevailing in the commercial world at the times in question, and that the action of the Commission is to be taken rather as a general illustration of the better methods required for the future than a specific selection of petitioner for reproof on account of its conduct in the past.

Respondent is directed to modify its order as above stated; and in other respects the petition is *denied.*

By Alschuler, Cir. J.

In my judgment the order of the Commission should be further modified by striking out the third paragraph, which relates to alleged representation that petitioner's competitors do not deal fairly and honestly with their customers. In so far as the sugar, coffee, and tea advertisements ascribe petitioner's asserted lower prices and superior qualities to quantity purchases and special facilities and advantages for inspection, selection, and purchasing, they would tend to negative any imputation upon competitors of unfair dealing with their patrons. I believe the charge of imputing to competitors unfair dealing with their patrons rests wholly on petitioner's so-called "caveat emptor" advertisement in its catalogue of March and April, 1916, wherein the public is cautioned in regard to white sugar, stating that some is cane and some beet sugar, alike in appearance, but the former usually higher in price; that petitioner plainly designates which of the two it offers, and the query is suggested, where else are goods so plainly described, and whether the customer gets elsewhere what he thinks he is buying. It seems to me that this does not amount to more than a statement or boast that petitioner, without being asked, describes the white sugars it proposes to sell, and the intimation is carried that competitors do not volunteer such description, but it is not suggested that they actually misrepresent the truth.

The facts before the commission appear by stipulation, and those concerning this advertisement, aside from the advertisement itself are as follows:

> When Mr. A. M. Daly, the attorney in charge of the investigation in these proceedings, was in Chicago, in March, 1916, he sub-

mitted to Mr. A. V. H. Mory, chief chemist of Sears, Roebuck & Company, and Mr. Joseph Scott, manager of the grocery department, a copy of the advertisement entitled "Caveat Emptor," hereinbefore mentioned and hereto attached, and requested them to state their views as to this particular advertisement and what it meant. They stated that this advertisement was for the purpose of calling attention to the distinction between beet sugar and cane sugar and laying stress upon the point of the facilities that Sears, Roebuck & Company have for marking everything plainly, so that the customer would know better from description the exact nature of what he was buying. After this explanation Mr. Daly went to his hotel. In a short time Mr. Mory called on him there and stated in substance that he had submitted the above-mentioned advertisement to Mr. A. H. Loeb, the vice president of Sears, Roebuck & Company, and that Mr. Loeb said that this course of advertising was unfair and unjust and declared that it must be discontinued, and further that it was against the policy of the house to send out such advertisements. Thereupon, on March 28, 1916, Mr. A. V. H. Mory, chief chemist, wrote to the Commission in part as follows: "The young man who wrote this was in to-day, and I pointed out to him wherein he had made a mistake and acted against house policy. He promised to use the soft pedal on all references to the dealer in the future. He tells me that this is an angle that had not occurred to him. He had not thought of the write-up in the light of a criticism of the dealer, so intent was he on pointing out that with our system of marking everything plainly and our facilities for knowing what we are

> selling, the customer would know better from our description the exact nature of what he was buying, in the case of those things difficult to judge than if he had them placed before him, which, of course, is true."

But assuming, as did petitioner's vice president, that this advertisement does carry the imputation that competitors deal unfairly with their customers under the circumstances indicated by the quotation, ought this advertisement to be the basis of a finding and order? The publication was in the catalogue for March and April, 1916. The complaint was filed nearly two years afterwards. The act authorizes the Commission to proceed when it shall have reason to believe that unfair methods of competition are or have been used, "and if it shall appear to the Commission that a proceeding by it in respect thereof would be of interest to the public." In a monitory proceeding, such as this seems to be, it could hardly be said that it would be "of interest to the public" to predicate action on a transgression for which due amends had long before been made without remotest cause to believe there would be a repetition. To revive a stale advertisement of this nature which the advertiser immediately after the publication distinctly disavowed as having been unintentionally and inadvertently unfair to competitors and ordered discontinued, without directly or indirectly repeating or renewing it for so long an interval, far from subserving the public interest, might, in my judgment, have the contrary tendency of raising an imputation of oppressive or at least uncalled-for action in predicating any proceeding or order on this advertisement.

Nor am I impressed with the authoritative relevancy here of decisions respecting injunctions. In a proceeding such as this, neither remedial nor punitive, decisions of courts respecting injunctional relief in equity are not more analogous than are common-law decisions defining unfair trade practices, arising out of controversies between individuals, as fixing thereby the limitation of the Commission's authority or scope.

The suggested modification would necessitate corresponding modification of the Commission's findings of facts, eliminating paragraphs Nos. 4 and 5 thereof. Paragraphs 2, 6 and 7 (as well as paragraphs 4 and 5) of the findings state the circulation of the several advertisements to have been in each case for "more than two years last past," indicating thereby the two years next before the date of the findings, which is June 24, 1918. This is in contravention of the stipulated fact that none of the advertisements were more recent than August, 1917, some of them even antedating the passage—September 26, 1914—of the Trade Commission Act itself. These findings should, in my judgment, be modified to comply with the stipulated fact.

A true copy.

Teste:

_____ _____,

Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

○

Office Supreme Court, U. S.
FILED
OCT 6 1919
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM—1919.

No. 492

FEDERAL TRADE COMMISSION,
Petitioner,

against

ANDERSON GRATZ and BENJAMIN GRATZ; doing business under the firm name and style of WARREN, JONES & GRATZ; P. P. WILLIAMS, W. H. FITZHUGH and ALEXANDER FITZHUGH, co-partners, doing business under the firm name and style of P. P. WILLIAMS & COMPANY; and CHARLES O. ELMER,
Respondents.

ANSWER OF THE RESPONDENTS WARREN, JONES & GRATZ, ABOVE NAMED TO THE PETITION OF THE FEDERAL TRADE COMMISSION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT, TO REVIEW THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS RENDERED IN THE ABOVE ENTITLED CASE ON THE 14TH DAY OF MAY, 1919.

THOMAS F. MAGNER,
Attorney for Respondents.

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Respondents.

Answer of the respondents Warren, Jones & Gratz, above named to the petition of the Federal Trade Commission for a writ of certiorari to the United States Circuit Court of Appeals, for the

Second Circuit, to review the judgment of the Circuit Court of Appeals rendered in the above entitled case on the 14th day of May, 1919.

The respondents above named deny the allegations in the petition that on the hearing before the Commission there was any testimony or evidence to show the following facts in said petition alleged:

1. That the respondents Williams & Company and C. O. Elmer are the general selling or distributing agents for the steel ties manufactured by the Carnegie Steel Co., but on the contrary the undisputed evidence is that Williams & Company are general merchants selling seventy different articles among them ties and bagging of various manufacture and that C. O. Elmer is a broker employed by American Manufacturing Company, engaged in selling their bagging and ties.

2. That the Carnegie Company manufactures seventy-five (75%) per cent. of all the steel ties manufactured and used for binding cotton bales and used in the so-called cotton States, the only evidence in the case showing that they manufacture no more than forty and five-tenths (40.5%) per cent. of all the ties so used.

3. That the respondents have within the last three years adopted and practised the policy of refusing to sell ties to those dealing with them unless they also purchased a corresponding amount of jute bagging, the testimony of every single witness examined by the Commission being that they procured at all times sufficient ties for their requirements without purchasing bagging.

4. That purchasers of ties from the respondents were *oftentimes compelled* to buy bagging in order to get ties—all the testimony being to the contrary.

5. That the alleged refusal to sell ties without bagging was an unfair method of competition against other *manufacturers* of bagging by American Manufacturing Company—the undisputed evidence being that the respondents furnished to the Ludlow Associates, Young & Metzner, The Federal Sugar Company and the Carolina Bagging Company, they being the only other *manufacturers* of cotton bagging, all the ties they required or desired and at terms as favorable as those given to American Manufacturing Company.

The respondents further answering the petition herein allege and show as follows:

I. That the respondents, Warren, Jones & Gratz, are merchants engaged in selling ties and bagging, that they are selling agents for the Carnegie Steel Company in ties, that Anderson Gratz and Benjamin Gratz are officers of American Manufacturing Company, makers of cotton bagging, and the firm is the selling agent of American Manufacturing Company west of Alabama.

II. That it has been the custom in the trade for many years for the firm of Warren, Jones & Gratz, representing the Carnegie Steel Company to market their cotton ties by allotting to the several manufacturers of cotton bagging and manufacturers of sugar bag cloth into cotton bagging, all the cotton ties that the various manufacturers re-

quired for the purpose of binding the cotton ties manufactured by them.

III. That in accordance with this custom the required allotment of ties was given to Ludlow Associates, American Manufacturing Company, manufacturers of new bagging, Young & Metzner, and the Federal Sugar Company, manufacturers of bagging made from sugar bag cloth. As manufacturers representing the American Manufacturing Company only these concerns were their competitors, no others manufactured cotton bagging except a concern called the Carolina Bagging Company of Henderson, North Carolina, which manufactured principally remade and pieced bagging. That it was customary for the respondents also to sell to jobbers, merchants and ginners cotton bagging and cotton ties.

IV. That the cotton bagging and ties were used to cover the cotton crop. Six yards of bagging and six ties were required for every bale of cotton, and the ginner wrapped both of these articles about the cotton bale. From time immemorial it has been the custom to sell cotton bagging and cotton ties in what is known as patterns, six yards and six ties being a pattern. The railroads in the south make freight contracts to carry so many patterns of ties with so many yards of bagging, and the respondents have always sold both these commodities in this manner, although a supply of either article might have been separately purchased.

V. In 1916 owing to the scarcity of ties caused by the world war, it being more profitable to put

steel into other products than ties, before the market opened, speculators, some of them customers of the respondents, tried to corner the market and raise the price of ties beyond what had ever previously been the market price. Among these persons was one, M. M. Graves, a customer of these respondents, and a witness before the Commission, who in the few months previous to the opening of the market in 1916 made a profit of over One hundred thousand ($100,000) dollars speculating in these ties.

VI. With a view of preventing this speculation and a corner in ties, in the latter part of June, 1916, previous to the opening of the market, the respondents caused it to be known that they were not selling ties unless to those persons who purchased bagging with them and they pursued this policy until the opening of the market when they sold ties broadcast to everybody, and at a price lower than that obtained by the speculators, thereby breaking the corner in ties.

Shortly thereafter the respondents were served with a complaint in these proceedings wherein, the respondents are charged in two separate counts *with the purpose, intent and effect of stifling competition and creating a monopoly in the sale of cotton ties and jute bagging in two ways: viz.,* (1) *by refusing to sell their ties unless the purchaser thereof would also buy a corresponding amount of bagging from them to go with the ties sold; and* (2) *by fixing the price of such bagging and ties upon an understanding or agreement that the purchasers shall not deal in the goods, wares or other commodities of their competitors.*"

The Commission offered no evidence tending to support the allegations in the Second Count on the complaint and has made a finding that "there is not sufficient proof submitted to sustain" this charge.

The Commission has offered no evidence in support of and has made no finding to the effect that the respondents were actuated *"with the purpose and intent" or that their conduct "had the effect of stifling competition and creating a monopoly."* They merely find that the defendants adopted the policy of refusing to sell ties to *"merchants and dealers"* unless such "merchants and dealers" would also buy from them a corresponding amount of jute bagging, and that the purpose and effect of this policy was to force merchants and dealers to buy American bagging and that "oftentimes" they were so compelled to buy. The Commission ignores the fact that the defendants distributed their ties principally through the *manufacturers of* bagging, and have ordered the defendants to desist from selling ties and bagging together in proportionate quantities.

That the respondents duly petitioned the Circuit Court of Appeals to set aside the said order of the Commission on the following grounds:

1. That the order of the Commission is in violation of the constitutional rights of the defendants.

2. That there is nothing in the findings of fact made by the Commission which authorizes or justifies the order made by it directing the defendants to desist, even assuming the findings to be supported by the evidence.

3. That there is no evidence to support the material findings of the Commission.

4. That gross errors were committed by the examiner for the Commission in the taking of testimony to the prejudice of the defendants.

5. That the methods of the investigation pursued by the Commission were unfair and prejudicial to the defendants.

6. That the method of distribution of ties and bagging is an economic question, and that the method pursued by the defendants is wise, and in the interest of the public, it should be continued.

That thereafter the U. S. Circuit Court of Appeals duly reversed said order and set the same aside as not found upon the facts and as contrary to law.

Wherefore respondents pray that the petition for the Writ of Certiorari be denied and the order of the U. S. Circuit Court of Appeals affirmed, with costs.

THOMAS F. MAGNER,
Attorney for Respondents,
32 Court Street,
Brooklyn,
N. Y.

Argument.

The petitioner comes before this Court praying that a Writ of Certiorari issue to review the judgment of the Circuit Court of Appeals rendered in the above entitled case May 14th, 1919, which judgment set aside an order of the Federal Trade Commission demanding the respondents to desist from selling cotton bagging and cotton ties together in proportionate quantities in accordance with the universal practice of the trade from time immemorial, and a practice which every single witness produced by and on behalf of the Commission testified was so essential to the conduct of the business that it could not be carried on in any other way. And notwithstanding that thousands of merchants, brokers and selling agents throughout the country were all engaged in selling cotton bagging and cotton ties together in proportionate quantities, for some reason which we are only permitted to guess, the respondents herein who are merchants and selling agents were alone of all the number singled out for the action of the Commission.

The learned Circuit Court of Appeals reversed the order of the Commission for two reasons, first: because there was no testimony to support the findings of fact as made by the Commission; and second, because the conclusions of law deduced from such findings and the order founded upon them are not warranted in law from the findings as made. The decision of the Court was unanimous and their reasons assigned are unmistakable. In part the Court's opinion is as follows:

> "And we discover no evidence to support the "finding in Paragraph 2 that the respondents

"adopted and practiced the policy of refusing "to sell steel ties to those merchants and deal- "ers who wished also to buy from them unless "such merchants and dealers would also buy "from them a quantity of jute bagging. It is "the natural and prevailing custom in the "trade to sell ties and bagging together just "as one witness testified it is to sell cups and "saucers together. *Such evidence as there is* " *of a refusal* to sell is a refusal to sell at all "to certain persons with whom the respond- "ents had previous unsatisfactory relations "and a refusal to sell ties without bagging at "the opening of the market in 1916 and 1917 "when there was fear that owing to the scar- "city of ties and the prospect of large crops "the marketing of the cotton crop might be "endangered by speculators creating a corner "in ties. The evidence is that with those ex- "ceptions the respondents sold ties without "any restrictions to all who wanted to buy "and indeed made extraordinary efforts to in- "duce the manufacturers of ties to increase "their output so that all legitimate dealers "and all cotton raisers should get enough ties "and bagging at reasonable rates to market "their cotton. It is only in these exceptional "and individual cases, which establish no gen- "eral practice affecting the public, that can "sustain the findings in paragraph 4. As we "think there was no evidence to support any "general practice of the respondents to refuse "to sell ties unless the purchaser bought at the "same time the necessary amount of Ameri- "can Manufacturing Co.'s bagging and that

> "the Commission had no jurisdiction to deter-
> "mine the wants of specific individual griev-
> "ances the order is reversed."

The ground upon which the petitioner seeks to obtain the writ of certiorari is that the learned Circuit Court of Appeals in another part of their opinion use these words:

> "There is testimony to support the findings of fact, and therefore the question before us is whether they do support the Commission's Conclusions of Law that the method of competition forbidden is unfair within the meaning of Section 5 of the Act of Sept. 26, 1914."

The contention of the petitioner is that by using the words "there is testimony to support the findings of fact" in the above connection the Circuit Court of Appeals could not have determined that there was testimony to support the findings in part only and reject other findings as not supported by the testimony as the Court did, but that having used the expression in one connection the Court is precluded for declaring to what extent there is testimony to support the findings and to what extent there is not.

The respondents contend that the petition for the writ should be denied and urge in support of their contention the following:

POINT I.

There is not only no evidence to support the following material findings of facts but on the contrary all the evidence in the record and principally that introduced by the Commission themselves show that these material facts are the other way.

A. That the Carnegie Steel Company manufactures 75% of all the steel ties manufactured in the United States.

B. That the defendants Warren, Jones & Gratz are the general selling and distributing agents of American Manufacturing Co. for the sale and distribution *throughout the state* commonly known as the Cotton States of jute bagging (Paragraph One, Findings).

C. That purchasers of ties "*were oftentimes compelled* to buy bagging manufactured by American Manufacturing Co. from the respondents in order to procure a sufficient supply of steel ties *used for the purpose aforesaid*" (Paragraph Four, Findings).

A. In the course of his argument before the Circuit Court of Appeals the then chief counsel for the Commission was forced to admit that the finding that the Carnegie Co. manufactured 75% of all the steel ties manufactured in the United States was not true, and that the evidence in the record introduced by the Commission themselves shows this finding to be untrue. Yet in the petition for the

Writ the solicitor General and the present Chief Counsel for the Commission not only reiterate that untruthful statement but even declare that "it is apparently not disputed" (Petition for Writ, page 12).

There are two kinds of steel ties used to bind the cotton bales, viz., *new ties* and *remade* or *pieced ties* made from used ties.

The only evidence in the case as to the number of *"new"* ties manufactured was that supplied by the Commission and consisted of the sworn testimony of the officers of the several manufacturer's corporations as shown by the books of their companies, as follows, in bundles:

	1915	1916	1917
Carnegie	1,308,624—59%	991,556—59%	1,170,887—65%
Pittsburg	259,985	183,764	210,585
Atlantic	437,338	368,994	334,212
Conners, Weyman	203,920	115,165	72,608
	2,209,867	1,659,479	1,788,292

There can be no difference of opinion as to these figures for they were furnished by the Commission and they are the only figures on the subject in the case. Previous to 1915 the Sharon Steel Company manufactured about 400,000 bundles of ties annually. Had they continued to manufacture the same number in each of the succeeding years the Carnegie output would have been but 43% of the total number of *"new"* ties manufactured. But in addition to the *"new"* ties there were manufactured many hundreds of thousands of *rebundled and pieced* ties used to cover the rewoven bagging. Mr. Claude Hutchinson, the largest manufacturer of rebundled and pieced ties estimated that there were 800,000 bundles of these second-hand ties manufactured and used to cover the cotton crop

in each of the years 1916 and 1917. Assuming his estimate to be correct, and *it is the only evidence in the case as to the number so manufactured,* the Carnegie Company made no more than 40 3/10% of *"all the ties manufactured"* in 1916 and no more than 40 5/10% of *"all the ties manufactured"* in 1917. These figures and this testimony were called to the attention of the learned Examiner who made that "finding of fact" which the Commission confirmed as well as to the Commission themselves, and we are constrained to believe therefrom that the Commission gave scant attention to the evidence in the case and to the respondents' brief when they adopted this Finding of the examiner that the Carnegie Company manufactured 75% of *"all the ties manufactured in the United States."*

It was necessary, of course, that there should be some exaggerated finding of fact to support the conclusion the Commission deduces therefrom "that the respondents sold and distributed such a large proportion of the entire amount of the cotton ties manufactured and sold, that they had what *'amounted'* to a monopoly of the cotton tie business of the country," which becomes mere rhetoric in view of the actual fact that they manufactured but 40% as is shown by all the evidence in the case. But as the motives which actuated the Carnegie Company to make more ties when their competitors were decreasing their output was both lawful and praiseworthy, this finding is not harmful.

B. In paragraph *one* of the findings the respondents are declared to be the "general selling and distributing agents of American Manufacturing Co.

for the sale and distribution throughout the states commonly known as cotton states jute bagging. While in paragraph *two* of the findings they were declared to be the sole selling and distributing agents of American Co. in all the territory west of the Mississippi River where cotton is grown.

The only testimony in the case is that they are the agents of American Manufacturing Co. only in the territory west of the State of Alabama and there too without compensation and as a matter of accommodation for the American Co. whose officers they are. Why these contrary findings of fact where made by the Commission is another of the undisclosed facts pertaining to this case, but the exaggerated finding in paragraph one was necessary to give some color of reason for these conclusions of law deducted by the Commission.

C. That purchasers of ties "were *oftentimes compelled* to buy bagging maufactured by the American Manufacturing Company from the respondents in order to procure a sufficient supply of steel ties *used for the purpose aforesaid*" (Paragraph Four, Findings).

What the Commission understands by the phrase "used for the purpose aforesaid" is not clear as it is not disclosed by the context. But assuming that they mean that the respondents oftentimes compelled purchasers who only wanted to buy ties to buy American bagging as a condition of getting ties, and that "*oftentimes*" purchasers did so buy bagging and ties when they only wanted ties, then *we say there is no evidence in the case to support this Finding.* Either as agents of the Carnegie Company or as agents of American Manufacturing Company it was the lawful privilege of the

respondents to refuse to sell either ties or bagging except in proportionate quantities of both, provided their conduct in that regard did not tend to create a monopoly or to stifle competition. Nevertheless, without respect to their rights, they contend that *there is nowhere in this record any evidence that any person was compelled by these respondents at any time to purchase and did purchase American bagging as a condition for obtaining any quantity of ties.*

The only witness who comes anywhere near to giving such evidence is G. O. Korndorfer, the manager for Rumbel-Wenzel Company; but an examination of his whole story proves directly to the contrary and shows that the respondents, P. P. Williams & Company, were the only persons in the country from whom he could or did get ties in 1916. Rumble & Wenzel Company handle about 700,000 yards of bagging and 10,000 to 15,000 bundles of ties annually (p. 3). In the course of his examination it developed that *he purchased all of these* 15,000 *bundles of ties from the respondents in* 1916; that in 1916 he handled 500,000 yards of bagging, only 100,000 yards of which he bought from respondents (p. 35); that he used to get ties from the Pittsburgh Steel Company, but has been unable to get ties from them during the last several years (p. 4); that one time he handled ties for the Atlantic Steel Company (p. 4), but in recent years they refused to quote him (p. 5); that Connors-Weyman Company also refused to quote prices on steel ties to Korndorffer or his principals for the last couple of years; that he and his principals have been unable to get quotations from any manufacturer of steel ties other than the respondents. He is asked on his direct examination:

"Q. With whom did you negotiate in this effort to secure ties in the Fall of 1916?

"A. With pretty nearly—I should say, every tie concern in this country. It was utterly impossible. We could not get any ties in any manner, shape or form *without buying American bagging.*

"Q. Through whom did you finally buy these ties?

"A. From P. P. Williams & Company of Vicksburgh. The first order was for 5,000 bundles of ties, this to go with 100,000 yards of bagging (p. 9).

"Q. At that time state whether you were already supplied with bagging?

"A. We were, with Ludlow bagging, manufactured in Boston, Mass. We had 300,000 yards of Ludlow bagging at that time. It was not all we needed for the season. We bought more afterwards. We carried over 50,000 yards of the American bagging that we bought from Williams" (Test., pp. 10-11).

This is the sole testimony in the case produced by the Commission tc support the several allegations made by them, that anyone was forced by the respondents to buy bagging as a condition of getting ties. On the cross-examination of this witness, the following facts were brought out:

He had been a purchaser and a representative of the Ludlow Associates, manufacturers of cotton bagging, for many years, and never purchased his ties from the respondents before 1916. He had been the local agent of the Pittsburgh Steel Company and the Atlantic Steel Company, both manu-

fucturers of cotton ties, who had every previous year supplied him with ties. They refused to supply him with ties in 1916 (surely not because he would not buy American bagging), and in his extremity he came to Mr. Fitzhugh of the Williams Company, the agents of the American Manufacturing Company, who kindly helped him out by selling him 5,000 bundles of ties owned by the American Manufacturing Company. Mr. Fitzhugh naturally tried to make a customer of Korndorffer's people and urged him to buy some bagging. But there was no compulsion about it.

In 1915, Korndoffer got his ties from the Ludlow Associates, who furnished him his bagging (p. 26). In 1913, 1914, 1915 and 1917 Korndoffer had no trouble in getting his ties without buying American bagging (pp. 34, 46). *The only time he claims that he was compelled to buy American bagging was in* 1916 (p. 34). In 1915 and previous, Korndorffer got his ties as well as his bagging from the Ludlow Associates (p. 26). When asked why he did not buy his ties, or try to buy his ties, from the Ludlow people in 1916, whose bagging he was handling and had for a long time handled, he answered:

"Simply because they do not manufacture ties, *and do not handle ties.*"

This, after he had already testified that he got his ties from the Ludlow Associates in 1915.

"Q. Did you make an effort to get ties from them?

"A. Yes, sir—no, I did not make an effort to get ties from them, but I did make an awful effort—

"Q. To get them from Williams & Company?

"A. No, sir, from the Ludlow people, to try to straighten out the tie question, to get some ties. We applied to them for help as we are getting desperate. It looked like we were not going to get any ties at all and we were handling 700,000 yards of their cloth and we thought that they might have some influence with the tie people, so we appealed to them" (pp. 34, 35).

Korndorffer further testifies:

"I asked them to get us some ties. *They stated they were not in the tie business; that they happened to have a few bundles of ties for some Texas people*, and for us to be patient, they thought we would get some ties. We appealed to them to try to help us and *they gave us the name of the Connors-Wyman Company of Birmingham, and the Atlantic Steel Company, at Atlanta, and the Pittsburgh Steel Company of Pittsburgh. They all refused to quote us*" (pp. 37, 38, 59).

It will be noted that the Ludlow Associates *did not refer him to Warren, Jones & Gratz for ties* because they had already supplied the Ludlow Associates with the ties for Korndorffer's bagging.

After being refused ties by everyone with whom he had previously dealt, including the Ludlow Associates, from whom he had annually purchased 700,000 yards of bagging, who likewise deceived him if his statement above is true, Mr. Fitzhugh of the Williams Company sold him 5,000 bundles or 150,000 ties, and at the same time sold him 100,000

yards of bagging. These ties came out of the stock of the American Manufacturing Company's ties (p. 17), which was 50,000 ties more than the allotted number to go with 100,000 yards of bagging, "pattern" consisting of six yards and six ties. This occurred in the month of May before the market opened, when everybody else to whom he had applied refused him ties. And Fitzhugh later, on the 23rd of August, when the market had opened, sold and sent him 10,000 more bundles of ties, without any bagging, a total of 15,000 bundles in 1916, that being the greatest quantity of ties he had ever purchased in one year, and this without selling or asking to sell him a single yard of bagging beyond the first mentioned 100,000 yards—50,000 yards of which he offered to take back. So that this man obtained 15,000 bundles of ties, 450,000 ties in all, enough for 450,000 yards of bagging, and he bought only 100,000 yards (p. 40).

Yet, though Mr. Fitzhugh was the only one who did help him, with base ingratitude, he writes him in complaint. The following letter of Mr. Fitzhugh in answer to his letters of May 24th and 25th is self-explanatory:

> "We see nothing in the correspondence you enclose which could be considered as a hardship on you. Our principals were able to get only a limited number of cotton ties of the Carnegie Steel Company and they cannot possibly ship them all out in June and July. The mills are making the ties as fast as they can. You know what demands the Government is making on all of the tie manufacturers and you realize that the Government's orders must

be taken care of first. You cannot possibly need all of your ties in June and July and if they are shipped along to your customers as they need them during July, August and September, their requirements will be filled just as well as if they were shipped at once, earlier in the season. If you will consider the matter further you will agree with us that your position is not reasonable. We feel that every jobber in these times ought to realize the difficulties of the manufacturers and do all they can to help them. If you want 3,000 bundles of ties for shipment, say 1,000 each, in August, September and October from the mill, we will see if we cannot get them for you, but to expect all in June and July seems to us unreasonable, and unless you will change your position that you 'do not want any August ties,' we do not see how we can help you. We are taking our supplies from scattered shipments during July, August and September.

"Very truly yours,

"P. P. WILLIAMS & COMPANY."

(pp. 49, 50.)

This unreasonable man who obtained all the ties he required for his business, who got them in suitable time for his market, got them entirely out of the supply purchased and owned by the American Manufacturing Company, a competitor of the Ludlow Associates, whose agent he was, and got all he ordered, all he bargained for, at the very beginning of the season, and was unreasonable as to the

time of the delivery of them, bases his charge that he was "compelled" to buy 100,000 yards of American bagging on a conversation had with Mr. Fitzhugh, which he subsequently detailed as follows:

> "I do not think there was anything said about bagging when we bought the ties, except Mr. Fitzhugh—I think he said, he did say, 'Can't you use some American bagging?' I said 'No,' and he said, 'Well, I am selling it alongside to anybody.' I said 'Of course, in your territory you can handle American bagging where they require it, as in the case of Ludlow with us'" (p. 55).

It is needless to say that Mr. Fitzhugh, who is far more worthy of belief than Korndorffer, entirely denies Korndorffer's version of the sale of the American bagging. Mr. Fitzhugh says he called Korndorffer on the telephone to try to sell him some bagging, argued with him about it and finally at his request, sent him two rolls of bagging as samples—one was Calcutta bagging—the other Borneo Brand made by American Manufacturing Company. That Korndorffer afterwards called him up and ordered the American Borneo Brand—100,000 yards and at the same time ordered 5,000 bundles of ties (pp. 545, 546).

This is the only witness who testifies that he bought bagging under compulsion in order to obtain a supply of ties. *We challenge the counsel for the Commission to point to any other testimony in the record where this man or any other person makes a claim to the contrary.*

S. H. Lowenberg, who made the complaint to the Commission, testified "Williams & Co. and Elmer

were the only parties that we could get any quotations from at all" (pp. 58, 59).

"We tried Atlantic, Connors-Weyman and Pittsburgh Co. They advised us they were all out of the tie business" (p. 59):

> "Q. *You did not know any people at all from whom you were able to purchase ties except C. O. Elmer and P. P. Williams & Co.?*
>
> A. *That is all* (p. 59).
>
> I have been able to get all the ties I wanted from P. P. Williams & Co. (p. 61).
>
> Q. *Were you required to buy bagging to get the ties?*
>
> A. *No, sir"* (p. 62).

The witness testified that he went out of business because he *"understood"* he was required to buy 100,000 yards of bagging with 3,000 bundles of ties (p. 77). *"Korndorfer told him so"* (p. 68).

> "Q. They never told you they required you to buy 3,000 bundles?
>
> A. I have no record of it. I don't say they told me that.
>
> Q. *That is the general impression you have and that is all you have to say about it?*
>
> A. Yes, sir" (p. 78).

Lowenberg had formerly been the agent for the Pittsburgh Steel Co.

> "Q. Why did you discontinue your agency for the Pittsburgh Steel Co.?
>
> A. They stopped manufacturing them so they claimed.

Q. Is it not a fact that the Pittsburg Steel Co. have made ties this very year

A. I could not say so.

Q. They told you they had discontinued your agency?

A. Possibly they did. We certainly got the information from them that they had discontinued the manufacture of ties.

Q. Will you say that they have not made ties every year since?

A. I would not say because I do not know.

Q. Your only and sole effort last year to get ties was from Elmer & Co. and P. P. Williams & Co. You got your ties and made no effort to get them elsewhere, but were still dissatisfied and wanted to *complain to the Federal Trade Commission on the supposition that possessed your min ! that somebody controlled the situation.*

A. *That is about it"* (pp. 83, 84).

This is the character of the evidence and of the witnesses that Federal Trade Commission produces to support the allegations in the complaint charging responsible business men with the violation of the Federal statutes for which they might be indicted as criminals.

Not a single other witness, and the Commission examined in all sixteen witnesses, testified that he was compelled to buy American or any other kind of bagging in order to obtain ties. We quote in detail from the other fourteen witnesses: Charles Platter of Boren & Stewart testified that he had carried over 35,000 yards of bagging from 1915. He had purchased this with a proportionate amount of ties from Warren, Jones & Gratz. He sold his

ties, 6,000 bundles, to M. M. Graves at a profit in December, 1915 (p. 115); in the spring of 1916, before the market opened he came back for more ties to go with 35,000 yards of bagging carried over (p. 118) and desired to purchase 6,000 bundles of ties—just the number he had sold to Graves. He was told he could not have them then, but he did get a telegram from Warren, Jones & Gratz in September, 1916, offering him all the ties he wanted (pp. 120-123). And the bagging he carried over was American Bagging (pp. 112, 122).

W. M. Foster, of Early-Foster Co., bought all the ties he wanted from Williams & Co. in 1916 without bagging (p. 190).

Mr. M. Graves, dealer in ties and bagging, sells American bagging and sugar cloth purchased from Young & Metzner. In May, 1917, Warren, Jones & Gratz did not have ties to spare (p. 208). They did furnish him ties to go with the bagging he had purchased (p. 209), and he got the ties for sugar cloth, 40,000 bundles from Warren, Jones & Gratz as agents for the Carnegie Co. through Young & Metzner, who sold him the cloth (p. 210). Shortly thereafter on May 19th, Warren, Jones & Gratz by letter offered to sell him 25,000 bundles of ties without bagging (pp. 211, 212, 222).

Edward Brim, who was "kind of speculating" in ties (p. 264) tried to buy from Warren, Jones & Gratz in February long before the market opened. He did not get his ties then but did get them in September and without bagging (p. 262). Had sufficient to carry over a stock of ties each year (p. 265).

J. C. Werner, of Meute & Co., dealers in sugar cloth and American bagging, also manufacturers of pieced or remade ties:

> "In 1915 bought 20,000 bundles of ties through Elmer; that is we thought we bought them" (p. 269). "Elmer told me he could not let him have the ties on account of not buying bagging. I do not know which Elmer it was. He was in the office. I do not know whether he was one of the firm or not" (p. 270). "It was over the telephone" (p. 275).

This is the sole evidence on this topic. He did get ties all he wanted without bagging in 1916 (pp. 274, 276, 280) and also in 1917 (p. 281). Got all the ties he needed in his business in 1915, 1916 and 1917 (p. 283).

Nowhere does the witness say that he was ever compelled to buy bagging in order to secure ties.

C. Lee McMillan in bagging business at New Orleans.

He tried to buy bagging and ties from Warren, Jones & Gratz, through C. O. Elmer during 1915, 1916, 1917.

> "Elmer read to him a letter he wrote them offering to guarantee any transactions that McMillan might have with Warren, Jones & Gratz. They still declined to sell him" (p. 293).

McMillan had defrauded Warren, Jones & Gratz, out of several thousand dollars, and they exercised their legal right to select their customers and they did not choose to deal with frauds. McMillan had dealings with Atlantic Company resulting in a lawsuit. They refused to deal with him (p. 318). Connors-Weyman and Pittsburg Steel Company also refused to deal with him (p. 279).

R. C. Wilkerson, a broker retired from business. The attorneys for the Commission asked this witness a number of incompetent questions which, with his answers, have no relation to the matters under investigation. W. F. Bidwell, an agent for the South Carolina Bagging Co., testified that on May 19th, 1917, before the market opened, Williams & Company wired him "will not sell ties without bagging" (p. 138-A). Nothing more.

August Wisrod, in storage and warehouse business, got a telegram from one W. H. Wingle to inquire about ties. Called up one Adolph Risser of Galveston on telephone who told him he could not sell ties without bagging (pp. 167, 168).

G. H. Fowler Fordyce, Arkansas, with a grocery firm. Had a conversation with one Wilbur Orth of a brokerage firm of Pine Bluffs, Arkansas. Orth advised that he could not sell ties without bagging (p. 154).

Paul Kling, secretary to H. C. Newman, Cotton Factors, New Orleans, in May or June, 1916, tried to purchase 3,000 bundles of ties from Warren, Jones & Gratz. Received answer that supplies were limited and was sold with bagging (p. 351). He subsequently bought 2,000 bundles from Warren, Jones & Gratz and 5,000 bundles from Williams & Co. without bagging (pp. 332, 340). He had no trouble in 1917 or any other year than 1916 (p. 340). In 1917 he bought 5,000 bundles from Warren, Jones & Gratz without bagging (p. 342).

Benjamin Margolius was the proprietor of two corporations, the Atlantic Jute Mills, and Southern Bagging Mills. He had defaulted on a previous contract with Warren, Jones & Gratz. They refused even to quote him (pp. 775-776). He testified:

"The Atlantic Jute Mills were in operation only a part of 1916. 'It is a new corporation. In 1917, our first full year we made every effort to obtain ties from the manufacturers *and did not succeed* in buying a single bundle' (p. 453). 'I made every effort to buy them. I tried to buy from Atlantic Company, from Connors-Weymann; from Pittsburg Steel Company; Sharon Steel Company, or anybody I knew in the business or had ever been in it. They all declined to quote us' " (pp. 465, 466).

John S. Jenkins, the Dixie Manufacturing Company, manufacturer of rewoven bagging. He testified:

"We asked Warren, Jones & Gratz to sell us ties in 1916 and they said they had none to offer. They did sell us ties later (p. 437), then we got all we wanted (pp. 441, 442, 444); we got them between June 30 and July 13" (p. 445).

W. P. Gohlson, secretary South Carolina Bagging Co. and also of the India Bagging Co., Henderson, N. C.

Though not relevant to the inquiry he was asked and permitted to testify that his business suffered because he was unable to procure ties in 1916 (pp. 385, 386). These two companies are practically the same (p. 391). Exactly what each manufactures is not disclosed by the record for their Secretary and Treasurer, Gohlson, who was the only officer of the company, testified two ways on every question asked him except his name. Here

are some samples of the testimony given on the direct:

"Q. Will you please state the difference between these two companies, as to their dependency on cotton ties?

A. *The Carolina Company manufactures a great deal of second-hand bagging, also second-hand ties to go with it.* The India Company only manufactures new bagging and they depend solely on the new manufacturer for their supply.

Q. *Does the Carolina Co. manufacture enough second-hand cotton ties to go with their bagging?*

A. *About; yes, sir.*"

The India Company does not manufacture any ties at all (p. 390).

Testimony on the cross-examination:

"Q. You say the Carolina Co. manufactures second-hand bagging?

A. Their *principal business* is the manufacture of *new bagging.*

Q. What is the India Bagging Company?

A. They manufacture new bagging, too, *now.*

Q. Does the Carolina Bagging Co. manufacture ties also?

A. It *supplies* second-hand ties (p. 394).

Q. I understand you to say that as far as Carolina Company is concerned you make enough ties to go with their production?

A. We manufacture enough ties to go with the second-hand bagging but the *second-hand bagging is a small part of the production* of the Carolina Co."

The Carolina Company manufactures second-hand and also new bagging (p. 394).

"Q. What are you making your *new* bagging out of?

A. Raw material from the cotton mills, known as *rewoven bagging.*

Q. You do not use any new fiber at all?

A. *We do not make any new bagging.*

Q. *You do not make what is known as new bagging at all—the Carolina Co.?*

A. *No, sir* (page 394).

Q. With the product that is manufactured by the Carolina Co. you sell with that product second-hand ties, do you?

A. *With the second-hand product manufactured we sell second-hand ties.*

Q. And you also buy new ties?

A. Yes, sir.

Q. Who have you usually been buying ties from?

A. From Pittsburg Steel Co. and Atlantic Steel Co. (page 395).

Q. *Did you try to buy any ties through Warren, Jones & Gratz of St. Louis in* 1916 *or* 1917?

A. *No, sir* (pp. 397, 398).

Gohlson testified that the Carolina Co. employed the witness, W. F. Bridewell, at Little Rock, Arkansas, and Lyle and Lyle at Huntville, Alabama, as

their agents (pp. 384, 404). While claiming that he could not get ties in 1916, he admits that though he never tried to purchase from Warren, Jones & Gratz their agents sold him all the ties he asked for. Claude Hutchinson testified that he sold him, and he admited that he bought from Hutchinson 18,000 bundles of new Carnegie ties in 1916 (pp. 398, 399, 400). He admits he sold them by the pattern with his bagging (p. 401) and will not deny that he sold a large part of them at a profit of $1.15 on each bundle (p. 401). In November or December, 1916, Claude Hutchinson bought back from the Carolina Co. 15,000 bundles of these new ties, and Gohlson admits that in 1916 he also sold to Hutchinson 800,000 pounds of spliced ties (p. 417); *that for three or four years he had been selling ties to Hutchinson* (p. 419). In 1917, he testified, the Carnegie Co., through Warren, Jones & Gratz, sold him 25,000 bundles of new ties (pp. 404, 785); through his brokers, Bridewell, and Lyle & Lyle, he purchased 35,000 bundles of new ties (p. 758); through I. W. Cooper, agent for Warren, Jones & Gratz, the Carolina Bagging Co., purchased 45,000 bundles new ties from 1914 to 1917, and Mr. Cooper testifies he sold them all they ever asked for (pp. 417, 518, 697).

A large part of these ties the Carolina Co. sold without bagging at a profit. Some they sold to W. M. Foster of Boren-Stewart Co. at an advance of 25 cents a bundle (pp. 179, 184). And their agent, Bridewell, testified that he sold 25,000 bundles of these ties as they came in solid car load lots out of Pittsburg for account of Carolina Co. and at the prices they quoted (pp. 146, 148). Instead of being without ties the Carolina Co. was speculating in ties. His brokers, Bridewell & Lyle, were circulariz-

ing the cotton States all this time, stating that they were manufacturers of new ties, and urging all to buy before the market opened as ties were going to be scarce, and they *were advertising that they would not sell ties without bagging* (p. 155). Gohlson finally admitted on cross examination that he had no difficulty in procuring ties. He could get a better freight rate out of Pittsburg for trans-Mississippi territory than he could from Atlanta or Birmingham and that his trouble laid there (pp. 421, 422, 423, 426).

The foregoing embraces the story of every witness produced by the Commission to support their finding that

> "purchasers of ties were '*oftentimes*' compelled to buy bagging manufactured by American Manufacturing Company from said respondents in order to procure a sufficient supply of steel ties,"

and we do not hesitate to say that there is not a scintilla of evidence in the record to support this finding, and we challenge the attorneys for the Federal Trade Commission to question the accuracy of the foregoing statements taken from the testimony in the record, and to refer to any testimony in the record in contradiction of that herein quoted by the petitioner.

POINT II.

Every single piece of testimony relied upon by the commission to support these findings of fact as stated in the brief accompanying the petition is incompetent.

Petitioner's brief (pages 16-17) states:

> "The following witnesses testified in sub-
> "stance that they could not buy ties without
> "purchasing bagging, for respondents: W. F.
> "Bridewell, G. H. Fowler, August Wisrodt,
> "W. M. Foster, J. C. Werner and Paul Kling.
> "If the foregoing evidence is not sufficient to
> "establish not only that there was a general
> "policy practiced by respondents, but that the
> "public was concerned, then the Federal Trade
> "Commission is at a loss to know when a case
> "has been made out."

When the term "testimony" is used in the Act we must assume that it means "competent testimony." Let us apply the rule to the above named witnesses' testimony.

W. F. Bridewell testified as follows:

> "Q. You tried to get ties from Warren, Jones & Gratz, P. P. William & Co. and the Pittsburgh Steel Co.?
>
> A. Yes, sir.
>
> Q. Did you try to get any from the Carolina Bagging Co. the people you represented your principals?
>
> A. Yes, sir" (pages 141, 142).

"Q. The efforts you made to buy these ties from other people (i. e., other than Carolina Co.) were all by correspondence or telegraph?

A. Yes, sir.

Q. You had no personal conversations with them, with any of them?

A. Not with those three concerns.

Q. Your relations were entirely by correspondence with Warren, Jones & Gratz, P. P. Williams & Co. and Pittsburgh Steel Co.?

A. Yes, sir" (pages 142, 143).

It was moved by counsel for respondents to strike out this testimony.

Mr. Roberts (counsel for Federal Trade Commission). He stated he sent the correspondence to the Carolina Mnfctg. Co. (page 144). W. Gohlson, Secretary and Treasurer of the Carolina Co. was afterwards examined and stated that it was not to be found (pages 385, 392, 393). This is his entire testimony seeking to support the finding. G. H. Fowler had a conversation with one Wilbur Orttz of Pine Bluffs, Arkansas. He was asked to state what Mr. Orto told him. Respondent's counsel objected to such testimony as not binding on them as they had no relationship with Orto. This objection was overruled and then followed:

"Q. What did Mr. Orto say to you in that conversation to you about their supplying your needs for ties?

A. He advised that he could not sell me ties without bagging" (pages 153-154).

This is his entire testimony seeking to bind the respondents. Nowhere in the case does it appear that he had any relationship to the respondents.

August Wisrodt in the storage business at Galveston was asked by a Mr. Wingle of Mills Point, Texas to procure for him some ties. He was asked:

"Q. To whom did you talk?

A. Mr. Adolph Risser of Galveston" (page 166).

"Q. It was the telephone conversation on May 17. That is the question I ask. Will you state what that conversation was?

A. Why I tried to buy 5,000 bundles of ties from Mr. Risser for Mr. Wingle, and Mr. Risser told me he could not sell me ties without bagging" (page 168).

"Q. You do not know what relation Risser was to Warren, Jones & Gratz, do you?

A. He used to be with Mr. Price. When Mr. Price was alive he was Mr. Price's chief clerk *so I presume he is chief clerk in the office of Warren, Jones & Gratz*" (pages 169, 170).

This is his entire testimony. Nowhere in the record does it appear that either of these people had any relationship to any one of the respondents or had any authority from them whatsoever.

W. M. Foster:

"Q. Did you ever make any effort during 1916 or 1917 to buy ties from the Sheer Co.

A. Yes.

Q. When you bought from Warren, Jones & Gratz?

A. I did not buy from them.

Q. To whom did you give the order?

A. I did not buy from Warren, Jones & Gratz.

Q. Well when the Sheer Co. sold—

A. I gave it to Sheer Co.

Q. What statements if any, while the *Sheer Co. represented Warren, Jones & Gratz,* did they ever make to you *to the effect* that they could not sell ties without bagging?

A. Why we always traded with the Sheer Co. on baggings and ties every year more or less and got more or less ties from them. This year or last year they simply said they could not sell *bagging without ties"* (page 177).

"Q. You say they did not—why not?

A. They did not have it themselves. They could not sell it if they did not have it, and they did not have it.

Q. That is the reason they gave you for not selling the ties?

A. Yes, sir" (page 178).

"Q. Who is the Sheer Co., Mr. Foster?

A. They are wholesale jobbers at Waco.

Q. Do you want the Commission to understand the Sheer Co. are the agents or anything of that kind for Warren, Jones & Gratz or simply handle their line of goods?

A. They simply handle their lines of bagging and ties so far as I know. I do not know that they are any particular agents, except they handle exclusively for them in that territory.

This witness further testified that in 1915 he dealt directly with Warren, Jones & Gratz but then made a working arrangement with Sheer & Co. for that territory embracing other goods and thereafter dealt with Sheer & Co. (pages 187, 188).

J. C. Werner of Mente & Co., New Orleans.

This witness admitted on cross examination that he got all the ties he desired, in 1916, 1917. He was asked on the direct about an incident that occurred early *in* 1915. His examination took place *October* 22, 1917. He was permitted to testify: "We have not been able to buy ties from Warren, Jones & Gratz since 1915 they insisted on our buying bagging with ties" (page 268). "They (Elmer & Co.) got us ties and we bought 25,000 bundles. They (Elmer & Co.) quoted us and we accepted, but the same day *"they" must have received a wire from St. Louis* and said they could not sell us ties without a corresponding amount of bagging" (page 269).

> "Q. Do you know which Elmer it was?
>
> A. *No, sir. It was over the 'phone I do not know which it was* (page 275). It developed that his whole story was founded on an impression he received from something that occurred in 1915 (pages 272, 276). This is the sole testmony he gave that had any relevancy to the matters under investigation.

Paul Kling received from Warren, Jones & Gratz, on June 27, 1916, a telegram as follows: "Our supply of ties limited. Manufacturers say impossible increase output. We must use our limited supply to go with our bagging. We are offering all parties in this way discriminating against none. Therefore cannot accept your order 3,000 bundles (page 331).

This witness further testified that he handled from 150,000 to 200,000 yards of bagging. His requirements of ties for that quantity of bagging he

said was 4,000 bundles. Subsequently in 1916 after the market opened he procured 2,000 bundles of ties from Warren, Jones & Gratz, and 5,000 bundles from P. P. Williams & Co., *and he got these ties without buying any bagging* (page 340):

> "Q. The only difficulty and trouble you had is you had a conversation with Mr. Elmer at the opening of the season and you got this telegram which you introduced on June 27, saying on account of the conditions they could not sell you ties—
>
> A. That is the first and only trouble I had" (page 340).

This is the sole testimony and these are the sole witnesses on whom the petitioner in his brief asks this Court to reverse the order of the Circuit Court of Appeals. The Counsel for petition cares not to call the attention of this Court to the examination of the other witnesses produced by the Commission.

From the viewpoint of a lawyer this so-called investigation took no more the character of a legal proceeding than the meeting of a sewing circle.

There were legal errors committed in the examination of every witness as conducted by the attorneys for the Commission. Opinion and hearsay testimony was given by every witness for the Commission. No witness was confined to a statement of the facts.

Korndorffer, the only witness who gave any testimony approaching a confirmation of the charges against the defendants, was asked: "Whether or not you were unable at any time to secure bagging and ties as your requirements demanded?"

A. We have represented the Ludlow folks, I suppose—well, I should say, forty year—at any rate, the whole thirty years I have been connected with my firm in Natchez, and last season, 1916, *we had an awful time trying to get ties, and we could not get any ties from any so-called independents, or Warren, Jones & Gratz or P. P. Williams without buying American bagging, as you will see by the bill here that we were forced to buy* 100,000 *yards of American bagging to get ties.*

> "Q. Is that the bill.
>
> A. Yes, sir.
>
> Q. With whom did you negotiate in this effort to procure ties in 1916?
>
> A. With pretty near I should say every tie concern in the country. It was utterly impossible. We could not get ties in any manner shape or form without buying the American bagging" (pages 8 and 9).

The "bill" referred to by this witness is found at page 16 of the testimony, is only the ordinary invoice for 100,000 yards of bagging in two separate bills, and a letter from Mr. Fitzhugh of Williams & Co. informing Korndorffer that he was diverting to him two car loads of ties that should have gone to other people, and ends with this expression: "We are glad to be able to help you in the matter" (page 17).

This testimony is purely opinion evidence without a solitary fact on which to base it to other than that Williams & Co. gave him ties when no one else would, and gave him ties by depriving some one else of them. He was not asked to state the facts. He

just gave forth pure "loose talk," as did every other witness examined by the attorneys for the Commission. This testimony is clearly incompetent *and this is the only evidence in the whole record to support the finding that "'oftentimes' dealers and jobbers were compelled to buy American Bagging in order to obtain ties."* On cross-examination it developed that even this opinion of the witness was unwarranted.

Williams & Co. sold him 10,000 bundles of ties in August, 1916, without bagging (p. 40), making 15,000 bundles in all, in 1916, enough to go with 450,000 yards of bagging. And in 1917 he got all the ties he wanted from P. P. Williams & Co. without buying any bagging (p. 46). There were four other manufacturers of new ties and numbers of makers of second-hand ties, and he is asked and makes this sweeping declaration of inability to procure ties without giving any of the facts showing that any of the other manufacturers had refused him, or the reason why if they did.

S. H. Lowenberg, the witness who made the complaint, never tried to buy ties from Warren, Jones & Gratz in 1914, 1915 or 1916 (pp. 66, 67). Did not try to buy from P. P. Williams & Co. in 1916 (p. 67). He had defrauded Warren Jones & Gratz in a previous year (p. 71). He was allowed to testify as follows:

> "Q. Who told you you had to buy 100,000 yards of bagging and 3,000 bundles of ties?
>
> A. I consulted a good deal with Mr. Korndorffer. A few years ago we used to buy a good deal of it together.
>
> Q. Korndorffer told you?

A. Korndorffer told me the facts of it. Showed me a letter or telegram" (p. 68).

This is the character of evidence the Commision have based their findings on. Lowenberg further is allowed to say: "I think that was done. * * * *I have not the evidence to* produce in writing but *I think* it was the *general price made* through Warren, Jones and Gratz, who were practically the controllers of the situation (p. 60).

Again he is asked:

Q. Was it not the fact that C. Lee McMillian & Co. have been unable to get any ties lately (p. 61)?

It may not be out of place here to refer to the facts that there is proof in the record that these two witnesses, Lowenberg and McMillian had both defrauded Warren, Jones & Gratz in former years.

R. C. Wilkerson a broker formerly representing a manufacturer who went out of business, is asked such questions as these:

"Q. Do you know of any one else who manufactures ties except the Carnegie Steel Co." (p. 92)?

"Q. Can any one else get ties from Warren, Jones & Gratz except Williams & Co." (p. 93)?

"Q. Why is it you could not buy ties from the mills at Birmingham and Atlanta in order to complete with P. P. Williams & Co. if you wanted to stay in the tie business" (p. 93)?

"Q. You had to discontinue business because P. P. Williams & Co. could sell them lower

than you could possibly afford to do it. Was not that the reason?

A. No, sir. I had to discontinue business because I did not have any connection that would give me the prices.

Q. That is just another way of stating the same thing. You could not sell the goods at a price where you could complete with P. P. Williams & Co.—*is not that so* (p. 495)? The witness knew absolutely nothing that was relevant to the charges against the defendants set forth in the complaint, yet the attorney for the Commission tried to make him express opinions that would create an atmosphere of prejudice against the respondents."

POINT III.

The order of the Commission is in violation of the equal rights of the respondents before the law.

If we understand the theory upon which the Commission claim to exercise a control over the conduct in trade of the respondents, it is because the respondents Warren, Jones and Gratz, who are the selling and distributing agents of the American Manufacturing Company for the sale of cotton bagging in the cotton growing States, and who are also the sole selling and distributing agents of the Carnegie Company for their cotton ties in the same territory, have adopted the policy of so distributing these two products that they sell the same together in proportionate quantities of each,

and while the only motive ascribed in their findings of fact by the Commission to the respondents in so distributing their products is "to force those dealers buying steel ties from the respondents to also buy at the same time from the respondents a corresponding amount of *American* bagging." Yet, that this motive did not influence the Commission in making their order, is shown from the fact that the order made by the Commission provides that the respondents may not, in accordance with the universal custom in the trade, sell ties and bagging together in proportionate quantities *regardless of who manufactured either the ties or the bagging.* The conclusion is strengthened by the reflection that the respondents, P. P. Williams & Company, who are general merchants selling over seventy different articles, embracing other ties than those of Carnegie Company's make, and other bagging than that of American Manufacturing Company's make, *may not sell together ties of any make with bagging of any make.*

The order of the Commission, therefore, is that all of these respondents must cease and desist from doing acts which are not unlawful, acts which every other trader or manufacturer in the country may do without let or hindrance and which every other manufacturer and trader in the country who deals in ties and bagging, has been doing from time immemorial, and which every witness examined by the Commission has testified is the only way in which the business can be successfully conducted

Korndorfer testified he knew of no dealer who sells one without the other. "They go together like a cup and a saucer" (p. 30). W. M. Foster testified: "You can not sell ties without bagging"

(p. 193). W. P. Gohlson says: "Did you sell bagging because I had no ties to match. Could not sell one without the other" (p. 403). The railroads recognizing the custom of the trade make special rates for combination shipments by the pattern (pp. 721, 722). The method was universal in the trade. Moreover the defendants, P. P. Williams & Company, are general merchants carrying over seventy different articles in their stock. They deal in other bagging than that manufactured by American Manufacturing Company and other ties than those of Carnegie make, yet they are prohibited from selling any bagging with any ties.

The order of the Commision would prevent these respondents from doing whatever other free American citizens may freely do and deprives these respondents of their constitutional right to the equal protection of the law with their fellow citizens.

> "The equal protection of the law means equality of opportunity to all in like circumstances, and that classification to be valid must not be arbitrary and discriminate against persons without a basis of reason. These principles have become familiar from frequent statement in the decisions and need no citation nor discussion of the cases here. They have become constituent elements in our popular form of government. The very nature of our free government forbids that a man should be compelled to refrain from acts which the law permits."
>
> Hauser vs. North British Ins. Co. (206 N. Y., 453, 462).

"No duty rests more imperatively upon the Courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

Gulf, Colorado & St. P. R. R. vs. Ellis, 165 U. S., 150, 165.
Cotting vs. Kansas City Stock Yds., 183 U. S., 79.

"The equal protection of the law requires that the same methods and means be applied impartially to all the constituents of each class, so that the laws shall operate equally and uniformly upon all persons in similar circumstances."

Kentucky R. R. Tax Cases, 115 U. S., 321, 337.
Connolly vs. Union R., 184 U. S., 540.

POINT IV.

What did the Congress mean when it used the word "unfair methods of competition in commerce are hereby declared unlawful" in the Federal Trade Commission Act?

The act says that "unfair methods of competition in commerce are hereby declared unlawful." The act does not say "all" unfair methods, nor does it define what acts constitute the "unfair" methods that are declared to be "unlawful." The word "un-

fair" and "unlawful" are both generic terms. The courts have construed their meaning variously according to the varying circumstances that have arisen in the multitudinous affairs of human intercourse. Certainly all competition is not unfair. Competition is said to be the life of trade, and methods of competition that are often very "unfair" to the individual and even to a class, and from his and their point of view extremely "unfair," may be for the advancement of the interests of the public. If the public, then, are benefited by the methods of competition no matter how "unfair" these methods may be to the individual who suffers from these methods of competition, the methods of competition are not "unlawful."

And the Congress may not by law prohibit the methods, for it would be a discrimination against the individual in the doing of a lawful act, and would be a denial to him of the equal protection of the law. To such cases the courts have applied the rule, *"damnum absque injuria."* Therefore, all competition is not unfair and all "unfair" competition is not "unlawful." If the public be unconcerned in the methods of competition and the methods of competition be so "unfair" as to trespass upon the rights of other persons, causing them injury, these acts usually called *torts* may be "unlawful" and courts of equity have restrained their continuance, and damages for their commission have been awarded by courts of law.

But inasmuch as the public are not interested in the repression of these unlawful acts, and as the Trade Commission is authorized to institute proceedings only when *"it would be to the interest of* the public" it cannot be that this class of "unfair" methods of competition in commerce, which though

"unlawful," was meant by the Congress to be brought within the provision of Section 5 of the Federal Trade Act. Therefore this last class of practices which embrace methods of competition in commerce at once both unfair and unlawful does not come within the purview of the act, and the terms employed in the act are not of universal application. *There is but one other class of methods in commerce which are both "unfair" and "unlawful," to wit: methods which involve an injury to the public—methods which restrain trade, stifle competition and create monopolies.* There were already many of these methods known to the law when the Federal Trade Act was enacted. They were contained in the Sherman law and the several anti-trust laws. And if the Congress intended when it passed the Federal Trade Act to make acts and practices "unlawful" other than and in addition to those already known to the law as "unfair methods," constituting "unlawful" restraint of trade, surely Congress would have expressed and defined them.

This the Congress not only refrained from doing, but the very provisions of the act negative the presumption that they intended so to do.

Though the act by Section 4 gives numerous definitions of the terms used therein it is ominously silent as to what it meant by the words "unfair methods of competition" and if it intended to add to the substantive law by including within its nomenclature a new set of "unfair methods" not theretofore included, and which thereafter would be "unlawful," surely the Congress would have said so.

That the Congress had in mind the possibility of the meaning of the terms "unfair methods of competition" being misunderstood, and negatived the idea that it intended making new substantive law, is shown by Section XI, which provides, "nor shall anything contained in the act be construed to *alter, modify or repeal* the anti-trust Acts, or the Acts to regulate commerce or any part or parts thereof." The closest scrutiny of the Act will fail to show any terms in the whole act to which this provision contained in Section XI could possibly apply other than to the words "unfair methods of competition in commerce" contained in Section 5 of the Act, and do not these terms show an intention on the part of the Congress not to enlarge these acts?

And that the Congress intended by this provision to limit the application of the Act to the then existing law is evidenced by this. The Federal Trade Commission Act was passed September 26th, 1914. On October 15th, 1914, the Congress passed what is known as the Clayton Act, entitled "An Act to *supplement* existing laws against unlawful restraints and monopolies." The Clayton Act enumerates a variety of acts which constituted "unlawful methods of competition" and specifically gives jurisdiction to the Federal Trade Commission to investigate and enforce the law concerning them (Sec. XI). These "unlawful methods" embrace "discriminations in price between purchasers of commodities, *where the effect of such discrimination may be to substantially lessen competition or to create a monopoly in any line of commerce*" (Sec. 2); "to lease or make a sale or contract for goods, wares, merchandise, machinery,

supplies or other commodities • • • or to fix a price therefor or discount therefrom or rebate upon such price or condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale may be substantially *to lessen competition or tend to create a monopoly in any line of commerce*" (Sec. 3); "no corporation engaged in commerce shall acquire the whole or any part of the stock or other share capital of another share corporation also engaged in commerce, where the effect of such acquisition may be to substantially *lessen competition or tend to create a monopoly*" (Sec. 7). Are not each and singular the "methods of competition" thus set forth in the Clayton Act "unfair methods of competition in commerce"? And if the Federal Trade Commission Act was intended to embrace them, why was the Clayton Act passed to "*supplement*" it? That the Federal Trade Commission Act like the Clayton Act applied only to the suppression of practices that tended to stifle competition and to create monopolies is evident, for investigations conducted by the Commission are limited to those cases "where a proceeding by it in respect thereof *would be to the interest of the public*" (Sec. 5, Federal Trade Act); and the public are only interested in those cases where their rights are apt to be injured.

Congress, therefore, has not changed the substantive law by the passage of the Federal Trade Commission Act.

The inquisitory powers of the Federal Trade Commission, therefore, are confined entirely to the "unfair methods of competition in commerce" made "unlawful" by the Sherman Law, the Clayton Act and the several anti-trust laws, and do not embrace those multitudinous "unfair methods" which the Courts take jurisdiction over, classified under the name of torts, and the Federal Trade Commission may not investigate nor make orders concerning them.

It was not the intention of the Congress to give to the Federal Trade Commission a roving commission to examine every merchant and manufacturer where salesmen give a box of cigars or a dinner to the customer's buyers, and order them to desist from so doing.

Nor could the Congress under the constitution pass a law making all "unfair methods of competition unlawful" and authorize a Commission to go out and say what acts *in their opinion* constitute "unfair methods" and what methods are unlawful, for this would confer upon the Commission powers both legislative and judicial.

The power to legislate is reposed in the Congress and they may not delegate that power to an inferior body of their own or another's creation.

"Unfair" is an abstract term. It is like "justice." Our Courts are supposed to administer the law, they try in doing so to be just, but in many instances the law is very unjust. What is fair to-day may be regarded as very unfair to-morrow. What A may think fair B may think very unfair in the same given case.

The report made to the House of Representatives by the conference managers when this Act was

before Congress for passage contains the following statement (p. 18): "It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all unknown unfair practices were specifically defined and prohibited it would be at once necessary to begin over again. If Congress were to adopt the method of definition it would undertake an endless task. *It is also practically impossible to define unfair practices so that the definition will fit business of every sort, in every part of this country. Whether competition be fair or unfair depends upon the surrounding circumstances of the particular case. What is harmful under certain circumstances may be beneficial under different circumstances.*"

The above, while illuminating, has no weight in the judicial interpretation of the meaning of the Act passed by Congress.

United States vs. Union Pacific R. R., 91 U. S., 72-79.

The Congress may not thus give an administrative body the discretion to say what facts constitute the "unfair methods" that are unlawful.

"The true distinction, as Judge Ranney, speaking for the Supreme Court of Ohio, has well said, *"is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law.* The first can not be done; to the latter no valid objection can be made." Cincinnati, Wilmington, etc. vs. R. R. Comr's., 1

Ohio St., 77. Cited in Union Bridge Co. vs. U. S., 204, U. S., 364, 383.

Field vs. Clark, 143 U. S., 649, 692.
Chinese Exclusion Cases, 130 U. S., 581, 609.

The Congress may not be able to frame definitions that will embrace all "unfair" practices, but they must define all those unfair practices which they would make "*unlawful*" to a degree that they would authorize an administrative body to restrain or prohibit them. And those practices which are still "unfair" and they would make "unlawful," but which are not susceptible of exact definition must be left to the Courts for determination because this determination is a judicial act.

An in so far as this Act professes to confer upon the Federal Trade Commission the discretion to say what or what are not, and when they are or when they are not, and where they are and where they are not "unlawful methods of competition" the Act is unconstitutional, and all orders of the Commission made under its provisions are void.

United States vs. Keokuk & H. B. Co., 45 Fed., 178, 187.
United States vs. Resler, 50 Fed., 406.

An analogous case is the development of the law of negligence. The law relating to negligence is a development of our jurisprudence that owes its existence entirely to the decisions of the Courts. All negligent acts to the injury of another are *unlawful*. But what is negligence is a matter of

judicial construction. Originally crimes were never predicated on acts of negligence. Now they frequently are but always by *legislative acts*. For example, in New York State an *act of* negligence causing death is manslaughter. Various other *acts* of negligence defined by the Legislature have been made misdemeanors by legislative enactment. But will anyone contend that the legislature may declare all negligent acts unlawful and appoint a Commission with power to say what negligent acts are and what are not unlawful, and empower the Commission to suppress those *they think* should be suppressed and allow the others to exist? Or to hold that some acts are unlawful in Texas and not unlawful in Maine?

The Act also confers upon the Commission judicial powers and is void therefor. In addition to casting upon the Commission the power to make the law, the Act confers upon it the power to construe the law. It usurps the functions of the Courts. Section 5 among other things provides for the service of a complaint by the Commission, the service of an answer by the defendant, the examination of witnesses, the taking of other evidence, making findings of fact and *conclusions of law* and the service of an injunction order restraining the defendant, "if upon such hearing *the Commission shall be of the opinion that the method of competition in question is prohibited by this Act.*" The Act further provides: "The findings of the Commission as to the facts *if supported by testimony shall be conclusive.*"

The Act provides for the service of orders, subpoenas to witnesses, and other processes, the taking of testimony by commission and generally to do

all the things both in procedure and decision usually done by the Courts. It is no answer to the charge that these are all judicial acts, that they are subject to review by the Circuit Court of Appeals. It is no answer to the fact that the Commission is authorized to pass on the law and *to give and to write "opinions,"* and to make findings of fact *that are "conclusive"* on the Courts *created under the authority of the constitution if supported by "any" testimony*, and the Commission makes its findings on the report of an Examiner appointed by it without having examined a single witness or seen or heard a witness testify personally. These are greater powers than are conferred by law upon Masters in Chancery and referees who are the "arms of the Court," and greater than conferred upon the jury, who are a part of the Court, and whose prerogatives have been ever regarded as most sacred—even as sacred as our Courts themselves from the very bginning of free institutions. It gives to a political commission all the functions, duties and powers of a judicial body.

There is no analogy between the Federal Trade Commission Act and the Interstate Commerce Act giving the Commission power to declare certain rates "unreasonable." This is purely a matter of administration and what is an "unreasonable rate" is a mere matter of arithmetic.

The Supreme Court in construing the Sherman Law in the Tobacco Case said: "The Act of Congress must have a reasonable construction, or *else there would scarcely be an agreement or contract among business men that could not be said to have indirectly or remotely some bearing on interstate commerce and possibly to restrain it." United States* vs. *American Tobacco*, 221 U. S., 179.

How can the words "unfair methods are unlawful" as provided in this Act receive a "reasonable construction"? Only by construing the words as being merely declaratory of the then existing law. See the mischief that would result from so construing the Act as to give to the Federal Trade Commission power to determine what are "unfair" methods in commerce and where "unfair" methods are "unlawful." Take the case at bar as an illustration. The Commission has determined that the methods employed by the defendants are "unfair" to certain "merchants and dealers." Here are some of the merchants and dealers who were treated unfairly by the defendants.

Warran, Jones & Gratz were very "unfair" to M. M. Graves. Mr. Graves was one of the witnesses for the Commission and one of the *"dealers and jobbers"* whom the Commission is so solicitous of protecting from the "rapacity" of these respondents. Before the Carnegie Company, through Warren, Jones & Gratz, opened the market for Carnegie ties on June 26, 1916, at $2.29 a bundle, Mr. Graves had in his stock carried over from 1915, 158,000 bundles of *new* ties. He sent circulars broadcast urging all to buy as ties were going to be very scarce and dear owing to war conditions, strikes, transportation difficulties, etc. He sold 60,000 bundles of new ties at $2.75 a bundle before the respondents opened the market, and cleaned up the tidy sum of $100,000 out of the dear public before the villainous Carnegie agents, Warren, Jones & Gratz, practiced their "unfair methods of competition" by offering to the public new ties at $2.29 per bundle (pages 216, 219, 220). Warren, Jones & Gratz were peculiarly "unfair" to Graves

for he was one of the American Manufacturing Company's best customers for bagging. Warren, Jones & Gratz were "unfair" to Rumble & Wenzel, whose manager, G. O. Korndorffer was the principal witness for the Commission. They had been supplied with ties and bagging. They sold their ties to Graves, who was cornering the tie market at a profit, and came back to Warren, Jones & Gratz for more ties before the market opened, and after every other manufacturer of ties had refused them (page 120). They were refused by the respondents before the market opened unless they would buy a proportionate amount of bagging. After the market opened and the corner was broken, they were offered all the ties they desired. It was very "unfair" to them that Warren, Jones & Gratz prevented them from profiteering on the consumers of cotton. But have the public interests suffered thereby?

S. H. Lowenberg and Lee and McMillen, two other witnesses from the Commission, are among the *"dealers and jobbers"* whom the Commission has found to have suffered from the "unfair methods of competition" practiced by the respondents in 1916. They each had business transactions in former years with Warren, Jones & Gratz; they bought bagging and refused to pay for it and escaped the collection of judgments by practicing the grossest kind of frauds (pages 71, 72, 323, 324, 325).

In the opinion of the Commission it was "unfair" not to sell them ties, but it was "fair" for these scamps to cheat and defraud the respondents.

Benjamin Margolius, another witness for the Commission, was also a *"dealer and jobber"* who

suffered from the "unfair methods of competition" of the respondents. He had defaulted in contracts with respondents and they refused to even quote him prices on ties. But they were not alone in being "unfair" to Margolius. He was similarly treated by the Pittsburgh Company, The Atlantic Company, Connors-Weyman Company and the Sharon Company (pages 775, 776). Can it be that in enacting this law it was the intention of the Congress to defy all economic law in order to preserve such parasites? It is paternalism run mad to believe so.

Will any Court say that Congress without violating the plain provisions of the Constitution delegated to this partisan political bureau, which by its composition it must be, the duty of making the laws and confer upon it judicial powers of interpreting them? The creation of this Commission is the greatest invasion of personal liberty that we have ever witnessed, and it is bound by reason of its political composition to be used in the future, if it has not already been used, for partisan purposes and political propaganda. It can be and will be made a means of oppression against any one who may dare to oppose its members or their followers. Without this Commission's assistance, our citizens have been strong enough and vigorous enough to resist and destroy the methods of their competitors in business who have practiced against them "unfair methods," as the numerous cases in our law reports attest; and when they become so weak that a paternal government must protect them or they perish then shall free government have ceased to exist.

POINT V.

The Findings as to the Facts.

There is nothing in the Findings to justify the Order of the Commission, assuming that the Commission has lawful authority in the premises.

The Commission has found as a Conclusion of Law: "That the *methods of competition set forth in the foregoing Findings as to the Facts* in Paragraphs 1, 2, 3 and 4 and each of them are under all the circumstances therein set forth *unfair methods of competition against other manufacturers, dealers and distributors of jute bagging;* and against other *dealers* and *distributors* in the material known as sugar bag cloth; and against *dealers, manufacturers* and *distributors* of the bagging known as *rewoven* bagging and seconded-hand bagging in violation of the provisions of Section 5 of An Act of Congress, approved September 26, 1914, entitled 'An Act to Create a Federal Trade Commission, etc.'"

Assuming, but not conceding, that there is evidence to support the Findings as to the Facts made by the Commission, the closest scrutiny of the Findings as to the Facts will disclose no Findings that support this sweeping Conclusion of Law of the Commission. The following is a brief but complete recital of all the material Findings:

PARAGRAPH ONE. That the respondents are all engaged in interstate commerce in the sale and distribution of cotton ties, and for such purpose the respondents, P. P. Williams Company and Elmer,

are general agents for respondents, Warren, Jones & Gratz, who are the general selling and distributing agents of Carnegie Company, manufacturers of cotton ties. That Warren, Jones & Gratz, are the general selling and distributing agents of American Manufacturing Company for the sale and distribution throughout the cotton States of jute bagging for covering cotton; that Mente & Company and many others *sell and distribute* a material known as sugar cloth used for wrapping cotton; that the Carolina Bagging Company *manufactures, sells and distributes* "what is known as rewoven bagging" (which, we will assume but which is not so found, is used for covering the cotton crop); that the "said material known as rewoven bagging *is manufactured and sold*" by other "corporations and co-partnerships in interstate commerce."

PARAGRAPH TWO: "That within three years last past the respondents adopted and practiced the policy of refusing to sell ties to those *merchants and dealers* who wished to buy from them unless such *merchants and dealers* would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those *dealers, merchants and jobbers* who wished to buy steel ties from the respondents to also buy at the same time from the respondents a corresponding amount of American Bagging manufactured by American Manufacturing Company of which company Warren, Jones & Gratz are the sole selling and distributing agents west of the Mississippi River."

PARAGRAPH THREE: That the Carnegie Company manufactures and sells annually about seventy-five (75%) percent of all the steel ties manufactured for binding bales of cotton in the United States, and sufficiently dominates the cotton tie situation in the United States to *enable it to fix and control the price of such ties* throughout the country. That forty-five (45%) percent of the jute bagging required to cover the cotton crop is manufactured by American Manufacturing Company; twenty (20%) percent by Ludlow Associates and thirty-five (35%) percent is made from second-hand bagging and sugar cloth.

PARAGRAPH FOUR: That a great many *merchants, jobbers and dealers* in bagging and ties were *many times* unable to procure ties from any other persons than the respondents. That the respondents sold such a large proportion of the entire amount of such ties manufactured and sold that they had *what amounted to a monopoly* of the cotton ties business of the country, controlling and distributing such a large portion of the entire output of cotton ties, that cotton growers found it impossible to bind the cotton produced without purchasing from the respondents almost the entire output of such cotton ties manufactured by the Carnegie Company," and "that the *dominating position* occupied by the respondents in the sale and distribution of cotton ties made it *possible* for them to force would-be purchaser of ties to also buy from them bagging manufactured by American Manufacturing Company, and in *many instances* respondents refused to sell ties unless the purchaser would also buy from them a corresponding

amount of bagging and such purchasers were *oftentimes* compelled to buy bagging manufactured by American Manufacturing Company from the respondents in order to obtain a sufficient amount of cotton ties" (Finding Four, fols. 189-192).

We respectfully submit that under the worst possible aspect from which these findings are viewed there is nothing in them that warrants the Conclusion of Law made by the Commission that they set forth "unfair methods of competition against other *Manufacturers, dealers and distributors* of jute bagging and against other *dealers and distributors* in the material known as sugar bag cloth, and against *manufacturers,* dealers and distributors of rewoven and second-hand bagging, in violation of the provisions of the Federal Trade Act."

Apart from the utter variance between the evidence and the Findings of Fact made by the Commission the most significant obervation regarding them is: the "Facts" the Commission omits to find, and the Conclusion the Commission refuses to deduce.

For example: The Commission finds as facts that the only *competitors* of the American Manufacturing Company in the manufacture of bagging are the Ludlow Associates who manufacture twenty (20%) percent of the new bagging (the American Company manufactures forty-five (45%) percent of the new bagging); the Carolina Bagging Company, which manufactures rewoven or second-hand begging; and that "rewoven bagging is manufactured and sold by other corporations and co-partnerships in interstate commerce." These unnamed manufacturers as far as the evidence in the case discloses are pure figments of the imagination. But whoso-

ever they are, they, with the Carolina Bagging Company and the Ludlow Associates are the only *manufacturers* of bagging who are found by the Commission to be *competitors* of the American Company; and it must be to them that the Commission concludes as a matter of law that the methods of the respondents Warren, Jones & Gratz, as agents of the American Company, in distributing their bagging with ties in proportionate quantities, are "unfair methods of competition" under the terms of the Federal Trade Commission Act.

Yet the Commission makes no Finding that the respondents or either of them refused to sell or attached any condition to the sale of their cotton ties to the *manufacturers* of either jute or rewoven cotton bagging; and they *omit to find* the very important fact essential to the proper determination of this inquiry, and which is shown by an abundance of uncontradicted credible evidence in the case, *that the respondents did sell and deliver to each and sigular the manufacturers of bagging for distribution with their cotton bagging all the cotton ties they required,* and enough to cover all they manufactured and at the same price paid by American Manufacturing Company. Evidence to this effect was supplied as to the Ludlow Associates and the Carolina Bagging Company, named in the Commission's Findings, as well as to the Federal Sugar Company and to Young & Metzner, manufacturers of Sugar cloth bagging who are not therein named.

Nor does the Commission make any Finding as to the Fact which the uncontradicted evidence discloses that both the Ludlow Associates and the Carolina Company as well as Young & Metzner

and the Federal Sugar Company practice the self same method of distributing their bagging and ties together as is practiced by these respondents as agents of American Manufacturing Company.

Nor does the Commission make any Finding that this custom has prevailed in the trade for many years, as has been testified by every single witness examined, and that W. V. Gohlson, the Secretary of the Carolina Bagging Company, testified that the business could not be conducted in any other way.

The Commission also finds that the same policy was adopted and practiced with "merchants, dealers and jobbers" and that the "purpose and effect of said policy was to force those merchants, dealers and jobbers who wished to buy steel ties to also buy at the same time from the respondents a corresponding amount of bagging manufactured by American Manufacturing Company" (Paragraph Two, Findings as to Facts), and "the dominating and controlling position occupied by the respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy bagging manufactured by American Manufacturing Company," and in *many instances* said respondents refused to sell ties unless the purchaser would also buy a corresponding amount of bagging, and such *purchasers were oftentimes* compelled to buy bagging manufactured by American Manufacturing Company (Paragraph Four, Findings).

The foregoing Findings are singularly barren of any facts showing the commission of any unlawful act on the part of the respondents. And this Court will not presume that the respondents

have committed an unlawful act where an innocent construction may be placed on their conduct.

Assuming, but not conceding, the truth of the finding that the purpose of the respondents was to compel *merchants, dealers and jobbers* to buy American Bagging with the ties they offered for sale; and that in "*many instances*" they refused to sell ties without bagging; and that "such merchants and jobbers were '*oftentimes*' compelled to buy American Bagging in order to procure ties," who will say that this constituted an unlawful act? Non constat—, *in the absence of a contrary finding, the purpose and the conduct of the respondents in that respect may have been both legal and praiseworthy.* Who were the "merchant, dealers and jobbers" whom the respondents refused to sell the ties without the bagging? Why did they desire to purchase one without the other? Did they desire to corner the market in ties? Why did the respondents, who furnished all the *manufacturers* with all the ties they required to go with their bagging, refuse to sell these alleged "dealers and jobbers" ties without bagging? If they had bagging and no ties why did they not procure their ties from the manufacturer of the bagging who had been supplied with sufficient ties to go with their bagging? Did these jobbers get ties from the manufacturers when they bought their bagging and sell their ties to a speculator at an advanced price, and then come back for more ties, as did Boren & Stewart, whose manager was one of the principal witnesses for the Commission (page 120)?

How are the "public's interest promoted" by such solicitude for these unnamed "jobbers and dealers"? They were not competitors of the respond-

ents, for the respondents are manufacturers' agents and "competition in interstate commerce could not be stifled or a monopoly created" by any conduct of the relators towards them.

The Commission has made a finding that the relators' conduct in trade did not lessen or stifle competition or tend to create a monopoly in interstate commerce.

Then what unlawful act were they guilty of?

If as the Commission has found "that a great many merchants, jobbers and dealers in bagging and ties were many times unable to procure ties from any other persons than the respondents," and "that the respondents controlled and *distributed* such a *large portion of the entire output* of cotton ties that cotton growers found it *impossible to bind the cotton* grown and produced in the United States *without* applying to and *purchasing* from the respondents and their agents *almost the entire output of such ties manufactured by the Carnegie Company*" (Paragraph Four, Findings as to Facts), does it not follow as a corollary that it was the duty of the respondents, who were distributors of bagging as well as distributors of ties, to so distribute the cotton ties that they would go with the cotton bagging, and so distribute the cotton bagging that it would go with the cotton ties, to the end that the consumer of both commodities would not only get the benefit of the cheapest method of transportation and handling, but that he would be certain to get the proper proportion of both commodities and it would not be in the power of any "dealer or jobber" to buy up an undue quantity of either commodity and thereby greatly advance the price thereof?

POINT VI.

The Federal Trade Commission in this case are practicing unfair methods of political propaganda, and respondents are their victims.

The conduct of this investigation by the Commission discloses either prejudice against Warren, Jones & Gratz, or an attempt at political propaganda.

Before the Commission framed their complaint they extensively circularized the whole cotton belt seeking persons to come forward to give testimony against Warren, Jones & Gratz. They prepared their case. They asked Anderson Gratz to give an account of his conduct, which he cheerfully did. When they knew the whole story they framed a complaint which in the second count charges the defendants with the commission of a crime to wit: the violation of the Clayton Act in that they were giving rebates on contracts for the purpose of creating a monoply in the cotton, tie and bagging trade. *When the Federal Trade Commission framed that complaint and made it a part of the public records they knew* they had no evidence to sustain the charge contained therein that respondents had violated provisions of the Clayton Act. They never offered a single witness to testify to any fact relating to any such charge, and instead of manfully stating that the charge was not true, they tucked away in the tail end of their "*conclusions of law*" the statement "that there is *not sufficient proof* submitted in the rearings to sustain the paragraph in the complaint charging a violation of Section 3

of the Clayton Act," well knowing that there is no proof and that no proof was offered.

The complaint in the first count charges "that *with the purpose, intent and effect of discouraging and stifling competition in the sale of such bagging* the respondents do now refuse to sell any such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought." *Unless the intent of the respondents was to stifle competition in the sale of bagging the charge must fall.* Before the complaint was filed the Commission knew that this charge was unfounded. Who were the persons alone who could prove such a charge, if the charge were true? No one else than the respondents competitors. The respondents are manufactures' agents of both ties and bagging. If the charge were true they must have in some unlawful manner discouraged the manufacture of ties by their competing manufacturers, and have refused to sell the ties of their principal to their competing manufacturers of baggage. At the outset the Commission was informed that the respondents did exactly the opposite of this. *They furnished their competitors in bagging, and all of them, all the ties they desired, and they besought their own principal as well as their competitors in ties to make more ties to supply the demand;* and the tie makers so testified and letters to that effect from the bagging manufacturers were supplied by the respondents, copies of which are annexed hereto

This is exactly what was done by the "dealers and jobbers" whom the Commission used as witnesses. The witness Korndorfer was the employee of Boren & Stewart. The respondents sold them ties in quantities more than sufficient to go with

their bagging. They sold these ties without bagging at a profit to M. M. Graves, of Graves & Company, who on a short market created by himself and several other "dealers and jobbers" turned over a profit of $100,000 on ties so cornered and stood to make profits twice as large if the respondents had not refused to sell him and these other speculative jobbers ties without a proportionate amount of bagging.

The Commission fails to make any finding showing how or in what manner the method of doing business was in any manner "unfair" to either these *manufacturers* or that these *manufacturers* were in any manner injured by it or complained to the Commission about it. Nor is there any proof in the case that they were or did. On the contrary the proof is that these manufacturers procured all the ties they required to bind all the bagging they manufactured and they obtained most of it from these respondents as agents of the Carnegie Company after their former principals had failed to supply them.

There is no finding and no proof that in the methods of business of respondents there was any discrimination in price or terms compelled by the respondents in favor of the purchasers of American Bagging or that any place in the country received prices or terms different from any other section.

There is no finding or proof in the case that the respondents in their conduct were prompted by the desire to or that their conduct did tend to stifle competition or to create a monopoly.

There is no finding that the public or that any person was injured unlawfully by respondent's methods of business.

Assuming, therefore, the authority in a proper case of the Commission to make a restraining order it has not in the case at bar made any findings to warrant the issuance of the order entered.

Did they subpoena the manufacturers? No. What was the character and who were the sixteen witnesses who testified on behalf of the Commission? Two of them, Lowenberg & McMillian, had previously defrauded the respondents. Wilkerson knew nothing and refused, though pressed by him to do so, to express the opinion of the attorney for the Commission, hostile to the respondents; two other witnesses, Green and Britton, were subpoenaed and were present with Wilkerson but refused to testify as desired by the attorney for the Commission; two others, Platter and Wisrodt testified to conversations on the telephone with third parties and another Foster to a personal talk, with a third party who were not shown to have had any relationship with the respondent. Another, Werner, testified to an *"impression"* he had formed from a conversation had on the telephone two and a half years previously. Another, Graves, who had already netted $100,000 in speculating in ties was deprived of great profits by the respondents. The only manufacturer produced by the Commission was Gohlson, secretary of the Carolina Bagging Co., and their agent, Bridewell; and though the Carolina Co. manufactured both bagging and ties the proof was that they bought ties from the respondents and sold them without bagging at a profit.

The Commission has found that the Carnegie Steel Co. *manufactures seventy-five* (75%) *per cent. of all the steel ties manufactured in the*

United States, and deduced from that finding the conclusion called a finding of fact that "it sufficiently dominates the cotton tie situation in the United States to fix and control the price of such ties throughout the country" (Findings, Paragraph Three) and "that the respondents had what amounted to a monopoly of the cotton tie business o the country" (Paragraph Four, Findings).

Only respect for an important lawful organization, compels us to characterize this finding with the mild term "unfair." The percentage of "*new*" ties made by the Carnegie Co. as established by the Commission's own witness—the officers of all the Steel Companies was but fifty-nine (59%) per cent. in 1915, fifty-nine (59%) per cent. in 1916 and sixty-five (65%) per cent. in 1917. Had the Sharon Co. continued to manufacture ties in those years as it did in 1914 and previous, the per centage, would have been forty-three (43%) per cent. But in addition there were made each year about eight hundred thousand (800,000) bundles of second hand ties, which brought the percentage to about forty and one-half (40½%) per cent. And it further appears from the overwhelming uncontradicted evidence that the Carnegie Co. made a greater proportion of the new ties in 1917 at a loss which its competitors would not take. And they made this increased supply at the behest of the respondents.

The method of distribution of ties and bagging, adopted by the defendants, *must have been very satisfactory,* or there would have been complaints concerning it. *This* record shows that there were *none, beyond* those stirred up by the Federal Trade Commission, as a part of a political propaganda.

Anderson Gratz and Benjamin Gratz, were agents, not the sole agents, of the Carnegie Steel Co. for marketing and distributing their steel cotton ties; they were also officers of the American Manufacturing Co., which make up forty-five (45%) per cent. of all the cotton bagging, and were selling agents of bagging for American Manufacturing Co. west of Alabama. They had the selling of about forty (40%) per cent. of all the ties and forty-five (45%) of all the bagging manufactured and apart from the pecuniary interest they had they owed a duty to the public to see that both commodities were properly and economically distributed. This was their method: The American Co. making forty-five (45%) per cent. of the bagging, the Ludlow Associates making twenty (20%) per cent. of the bagging, Young & Metzner and the Federal Sugar Co. baking bagging from sugar cloth, were alloted usually as many bundles of ties as they desired to go with their bagging. This allotment was usually made before the market opened which occurred in June or July each year. The rest of the bagging was rewoven or pieced bagging made by a number of small concerns in the southeast. This last mentioned bagging was bound with remade and pieced ties and by some new ties made by the Atlantic Steel Co. of Atlanta, and Conners-Weyman Co. at Birmingham, Ala. In 1916 the great war was then at its crest. Cotton was in great demand for explosives as well as for clothing, and steel was demanded for armament and shells. The steel manufacturers could get better prices for hoops than they could for the ties from which the hoops were fabricated. The importation of jute out of which the bagging was made

almost ceased. There was then an apprehension that there would be a scarcity of both ties and bagging.

This apprehension was increased by an agitation on the part of speculators who desired to make money out of the situation. Scarehead circulars were sent broadcast throughout the cotton belt informing probable buyers of the impending scarcity of jute and steel; of the probability of strikes, railroad congestion and urging all to buy before the market opened both of ties and bagging (pp. 716-719). Mr. M. M. Graves, a witness for the Commission, was an industrious sender of these circulars.

From 1915 Graves carried over 158,000 bundles of new ties. His and other dealers' circulars produced a panic desire for ties. Before the market opened Graves had sold 60,000 bundles of new ties so carried over at from $2.65 to $2.75 a bundle. Before the respondents opened the market for Carnegie ties at $2.29 a bundle on June 26, 1916, Graves had cleaned up a profit of about $100,000 (pp. 216, 219, 220). There was a mad rush for ties (pp. 264, 701). Foreseeing the danger the respondents caused it to be known that they would sell ties only to those who wanted them to be sold or used with bagging, and they notified many people to that effect in May and June, before the market opened and before the ginners began to buy ties, which is after the month of August. In conjunction with Mr. W. G. Clyde of the Carnegie Co. they then proceeded to do what had been the custom in the trade for many years. They saw that the American Manufacturing Company, the Ludlow Associates, the Federal Sugar Company, Yong & Metzner, the Carolina Bagging Co., and other dealers in bagging got sufficient ties to go with their bagging.

This distribution, together with the notices of "no ties without bagging," stopped the excessive and speculative demand for ties and resulted in every ginner having both ties and bagging sufficient for all his requirements and in plenty of time to cover to crop; and when it became evident that this result was brought about, to wit: in the latter part of June, the respondents sent letters and telegrams broadcast offering ties to all who desired them (pp. 724, 744, 748, 795).

In accomplishing this result the respondents assumed as merchants a large responsibility and faced a possible great financial loss. They sold for the Carnegie Co. many more ties than Carnegie Co. did or could make. Within a week after the market opened on June 26th, they were oversold. On June 30th, they had sold 682,722 bundles. They had manufactured 688,643 bundles. In July they manufactured 121,249 bundles. Up to July 31, they had sold 1,363,478 bundles (p. 481). Nor is that all. Mr. Jenks of the Carnegie Corporation, general manager of the bar and hoop department, testified that Anderson Gratz was constantly urging the Carnegie Corporation to increase their output of ties (pp. 675, 676, 677). *Mr. Gratz personally called on Mr. Glenn of the Atlantic Company, and also sent Mr. Charles F. Brown, his salesman, to urge the Connors-Wayman Company to increase their output of cotton ties, stating that there would likely be a shortage of ties on account of some of the tie makers declining to manufacture;* that it was throwing too big a load on Warren, Gratz & Jones, and asked if they could not relieve the situation. And in answer to that prayer the Connors-Weyman Company continued to make ties at a loss of more profitable business (p. 682). Mr. Brown at the

same time urged him to furnish ties to some of Warren-Gratz-Jones best customers, such as Claude Hutchinson and Charles W. Priddy, which meant the loss of a customer without any gain to the respondents (pp. 684, 685). *Mr. T. K. Glenn of the Atlantic Steel Company testifies that Mr. Gratz* urged him to do the same thing (pp. 691, 692). He testified that Mr. Anderson Gratz *personally requested him to make more ties for the purpose of steadying the market and keeping down the prices and furnishing the various cotton ginners with ties;* and requested him also to furnish ties to some of Gratz's customers without any profit to Gratz (pp. 693, 694). He spoke of the necessity for everybody making personal sacrifices in order to make sufficient ties to cover the crop and to prevent *speculators coming in and cornering the market* (p. 694), *urging they do so even at a sacrifice of their profits in other things* (p. 695). Mr. Claude Hutchinson testifies that at the request of the respondents he personally called on Mr. Connors and Mr. Glenn with like purpose in view (p. 649). Mr. Charles W. Priddy, a large customer of the respondents, testifies likewise that Mr. Anderson Gratz asked him to personally call upon some of the other tie makers and obtain their supply from them, and he did, in pursuance of this request, see Mr. Connors and Mr. Glenn with a view of dealing with them rather than the respondents (pp. 827, 828). All this time Anderson Gratz was beseeching the Carnegie people to make more ties. He testifies:

> "I even went so far as to say to the president "of the Carnegie Company that they had better "make all the ties they could and throw those "not needed into the ocean rather than run

"short. That the prosperity of the whole "United States depend on the movement of the "cotton crop, which could not be moved unless "they made the ties necessary to cover the "crop" (p. 727).

As the Carnegie Corporation had sold out its stock of ties within a week or two after the market opened, there were no ties for a little while for the respondents to sell. *American Manufacturing Company had* 500,000 *bundles to sell with their bagging. The Ludlow people had* 400,000 *bundles to sell with its bagging.* That is, they had 4-5 as many ties as American Manufacturing Company for 1-2 as much bagging. The Carnegie ties were sold so far ahead, within a week or two after the beginning of the market, that it was not safe for the respondents to incur further liability. As the Ludlow people hoarded their ties and as Carnegie had no more to sell, *the American Manufacturing Company, after a space of about two weeks* (p. 795) *gave back to Warren, Jones & Gratz a considerable share of the ties they bought so they might be sold to the customers of the Ludlow people,* and all others who might desire them, and for the purpose of steadying the market telegrams were sent *broadcast to everybody offering ties to anybody who would buy them more than a month before there was any real need for them* (pp. 724, 747, 748, 795). In this way the respondents oversold the supply by 377,000 bundles, but it stopped the panic for ties.

One of the witnesses produced by the Commission, Korndorffer, who claimed that he was compelled to buy American bagging, and his friend, Lowenberg, who made the complaint to the Commission at the request of Mr. Wallace of the Lud-

low people, were both among the many customers of the Ludlow concern, who received ties in this manner without any bagging or request to purchase bagging and at a price lower than could be had from any other dealer (pp. 533, 534, 535). And obtained all they asked to buy (pp. 548, 550, 551, 757, 758).

Other customers of Ludlow who received like treatment were: The Goyer Co. (p. 537), the McMahon Grocery Co. (p. 530), Earley-Foster Co. (pp. 530, 531), Ed. Brice (p. 531), Brown (p. 526), John W. Brooks (p. 806), Newman & Co., John W. Perry, Munroe Grocery Co. (p. 812), Greenwood Grocery Co., John V. Jenkins, John W. Parker (p. 806), Rumble & Wenzle (pp. 807, 792).

The same treatment was meted out to the customers of the American Manufacturing Co. as to the others—both as to service and price paid for the goods (p. 543).

The W. W. Graves Co., one of the largest dealers in the country, and the largest dealer in the country in American car bagging, was treated just the same as the Ludlow customers (pp. 796, 803).

So was Boren-Stewart of Dallas (pp. 744, 777, 796). So was Blair-Hughes Co. of Dallas (p. 804). So was the Rotan Grocery Co. (p. 805); so the Paris Grocery Co. (p. 805).

There was absolutely no discrimination or favoritism shown to any one; all were treated alike (p. 824).

In carrying out this policy, the American Manufacturing Co., as well as the respondents, not only refused to take advantage of the market conditions to clean up a fortune, but they actually lost money in the transaction that they might have properly made both in law and morals, in the sale of their own ties (pp. 749, 761, 778).

And the respondents cheerfully turned over some of their best customers, such as Hutchinson and Priddy, to their competitors in business, as we have heretofore shown, at the loss of whatever profit there was in the business. They sold their ties cheaper than any of their competitors, and cheaper than the same material fabricated into other kinds of goods, such as hoop and grain bags, were selling in the same market.

In 1916 hoops were worth $5.70 a ton more than ties and cost $2.00 more a ton to fabricate (pp. 679, 680, 700). Burlap, made from jute, advanced 304%; cotton bagging, made from jute, advanced 45% (pp. 562, 563, 625). In addition to this there was no discrimination in price or quality—every one was treated alike everywhere. It is hard to conceive why a public commission should condemn and desire to change such methods.

The respondents respectfully submits that their conduct in the premises does not tend to stifle competition or to create a monopoly, that it was not adverse to the interests of the public but was plainly to their advantage, that no one but the profiteer was injured by it, that their methods of selling ties and bagging together was in accordance with the established custom of the trade from time immemorial, that their methods were not unfair, and they respectfully pray that the petition for the writ be denied with costs.

THOMAS F. MAGNER,
Attorney for Respondents,
Warren, Jones & Gratz.

APPENDIX.

LETTERS IN EVIDENCE CONTAINED IN TRANSCRIPT.

July 7, 1916.

Mr. W. G. Clyde,
Carnegie Steel Company,
Pittsburg, Penna.

Dear Mr. Clyde:—

Enclosed find letter received today from the Ludlow Manufacturing Associates, and copy of my reply.

Apart from a few unpleasant words used by Mr. Wallace, he is doubtless justified in the way he looks at things.

In order to make Ties go around as far as possible, it is absolutely necessary to keep them out of the hands of speculators. *A good many people have wanted to buy Ties for the purpose of holding them for higher prices. These people we have declined to sell and have tried to limit our sales to merchants having a stock of Bagging of the American Mfg. Co., Ludlow Company or somebody else's; the idea being that people with Bagging would be more apt to desire the Ties to sell promptly.*

So far we believe that we have done pretty well, and except for a lot of growling do not seem to have made any trouble.

Of the Ties bought by the American Mfg. Co., 120,000 bundles have been actually sold in the Southeast, 130,000 bundles are held to cover cur-

rent order from Mr. Priddy (N. B. Co.), Mr. Sparks and Chleston. 60,000 are for sale by P. P. Williams & Co. This office is making some sales right along. The rest of the 500,000 Ties will be sold as fast as Warren, Jones & Gratz find trade amongst people whom we think will promptly re-sell.

A good many Ties are now being sold by Atlanta and Conners. Second-hand Ties are being distributed in the Southeast.

I will be very much pleased to have you write me to St. Louis, Mo., Saturday making any suggestions that you may care to make as to a better method of handling this business.

Please send the correspondence from Mr. Wallace along with your letter.

Yours truly,

AG:W (Signed) ANDERSON GRATZ.

January 11th, 1916.

MR. C. N. WALLACE,
Pres., Ludlow Manufacturing Associates,
Boston, Mass.

DEAR MR. WALLACE:

Referring to your letter of December 31st:

Yesterday I was in Pittsburg and had a conference with the officials of the Carnegie Steel Co.

Their net stock of Ties on hand at present is about 330,000 bundles. They think they can make 500,000 bundles more by July 1st, they will try to add something to that. After the first of July

their manufacture cannot exceed 125,000 bundles per month, if even it is possible to make that number.

I understand that you have quite a lot of Ties carried over, which should help you to begin the season. Under the circumstances, I think we are justified in asking you to moderate your demand for 150,000 bundles a little.

You can take this letter as giving you an option at our lowest opening price on 120,000 bundles of Ties, open to you for one week after we make the price, whether that be in April or July.

It is not possible for the price to be low. *To induce other manufacturers to make any Ties so that the crop may be covered, it may be necessary to have quite a high price, but all that will have to be decided in the future.*

The thing is that giving you this kind of an option on 120,000 bundles is giving you a larger offer on our prospective supply than has heretofore been the case.

If I am correct in thinking that you have between 50,000 and 75,000 bundles already on hand, you have an ample supply until October, before which time we certainly hope that we will be able to care for any additional quantity that you may require.

Yours truly,

(Signed) ANDERSON GRATZ.

January 19, 1916.

MR. C. N. WALLACE,
Ludlow Manufacturing Associates,
111 Devonshire Street,
Boston, Mass.

DEAR SIRS—

Your favor of January 18th received.

The trouble in the Steel business is to get raw Steel—however, we are going to have some Ties.

You may consider this letter an option on 150,000 bundles, open to you for one week after we name a price. Ties to be ready for immediate shipment at that time.

If, in the meantime, you can arrange storage for these Ties at Galveston, so much the better.

I suggest that it is quite probable that there may be trouble getting shipments from Pittsburg through, and it will be well if you can ask the railroad company at Galveston to take care of the Ties at the earliest possible date.

Allow me to say that if it had not been for your consistent preference given to us in this business, we most certainly could never have arranged with the Carnegie Steel Co. to give you this option.

Yours truly,

(Signed) ANDERSON GRATZ.

July 7, 1916.

MR. C. N WALLACE,
Ludlow Manufacturing Associates,
111 Devonshire Street,
Boston, Mass.

DEAR SIR:—

Your letter of July 6th received.

You are under some misapprehension. I have never controlled the number of Ties to be made nor the price. My advice has usually been taken as to the number of Ties manufactured, and has sometimes been taken as to the price—not always.

This year I told the Carnegie Steel Co. that it was necessary to have 1,000,000 bundles of Ties by the first of July, based on their competitors making about so many. Now, either the competitors have not made that many, or they are not willing to sell them freely, and the demand thrown on us has been more than we can supply.

Amongst the earliest sales made by the Carnegie Steel Co., were 200,000 bundles to the Ludlow Mfg. Co. and 500,000 bundles to the American Manufacturing Co.—total 700,000 bundles, deliveries scattered over until November. Beginning July 1st with 1,000,000 bundles, we have counted on the Carnegie Co. supplying us a total of 1,400,000 bundles. Including the 700,000 bundles mentioned above, Warren, Jones & Gratz has sold 1,330,000 bundles—just how it would be possible for them to continue selling to anybody I do not know.

The American Manufacturing Co. is continuing to supply Ties out of the 500,000 bundles they have bought, and have so far obligated about 350,000

bundles. That leaves 150,000 bundles to bring Bagging business.

Messrs. Warren, Jones & Gratz as the selling agents for the American Manufacturing Co. cannot be allowed to sell those Ties except along with their Bagging. If we can get any more from the Carnegie people, they will be for sale first to the people who have bought the other 1,300,000 bundles, and then to the trade in general.

The Ludlow Company have been much better protected in this matter than the American Manufacturing Co. You have a provision of 335,000 bundles, while the total Ties on which the American Company had any claim were 530,000 bundles. If anybody suffers in the whole operation, it will be the American Company.

To *gain an advantage on our competitors and guard ourselves from disaster, we should have taken the Carnegie Co.'s whole* 1,400,000 *bundles, and would have been glad to do so except for the broader policy protecting the Carnegie Co.'s trade by giving Ties to every one who had been their customers in years past.*

I am expecting to hear to-day as to additional supplies of Ties, but fear that there will be very few possible for us to get.

This is one year when the Carnegie Steel Co. can well afford investigation. They have sacrificed their other business and large profits to make their usual quantity of Ties—have sold those Ties to their usual customers at a moderate price, even while others were getting from 10c. to 25c. per bundle more, *and now even you are disposed to criticize*

them because they have not made 50 per cent. more ties they have usually made, and sold them to people who have not usually been their customers.

Yours truly,

AG:W (Signed) ANDERSON GRATZ.

August 1, 1916.

MR. WM. G. CLYDE,
Ass't. Gen. Mgr. of Sales,
Carnegie Steel Co.,
Pittsburg, Penna.

DEAR SIR:—

The prospects of the Cotton Crop are not so good, and whether the Crop is to be large or small, it certainly is late.

Everybody seems to have some Ties, and we no longer hear complaints from any source.

It now seems safe to do what we would have liked to have done before, and that is to offer Spot Ties broadcast throughout the Cotton Belt. I have, theretofore, telephoned Warren, Jones & Gratz to quote Ties to everybody from Norfolk west August-September shipment. There will be some sale no doubt, but I do not believe total purchases will amount to 25,000 bundles, which we will furnish from the American Manufacturing Company's Spot Stock.

Offering Ties in this way we will remove the last vestige of complaint, and will also encourage other holders of Ties to sell.

We have sold a good many Ties at $1.35 less 4 to the trade—some few at $1.35 flat. *Where your Ties have been billed to the American Manufacturing Company and then resold by the American Company without Bagging at a profit, account will be made to Carnegie for that profit, as you will remember that I told you the American Manufacturing Company's Ties were being bought only for sale with Bagging and would not be held for any profit where sold without Bagging.*

If the cotton crop really is short, it is quite possible that it may not be necessary to increase your manufacture in October beyond 100,000 bundles as first contemplated.

Yours truly,

AG:W (Signed) ANDERSON GRATZ.

August 3, 1916.

MESSRS. YOUNG & METZNER,
355 Vernon Ave.,
Long Island City.

GENTLEMEN:

Herewith find some Carnegie Freight Lists.

I quote you for account of Warren, Jones & Gratz of St. Louis, Mo., any part of 10,000 bundles Standard Arrow Cotton Ties for August shipment at $1.31¾ Pittsburg basis plus these freights. The Ties may be shipped from Youngstown or somewhere else.

Price is arrived at on the base of $1.35 less 4¢ per bundle to large dealers plus ¾ of 1¢ per bun-

dle for August shipment. If you want these Ties for September, price will be another ¾¢ per bundle higher, and so again for October.

This price good to you until Noon August 4th.

Yours truly,

AG:W (Signed) ANDERSON GRATZ.

August 3, 1916.

MR. WM. G. CLYDE,
Ass't. Gen. Mgr. of Sales,
Carnegie Steel Company,
Pittsburg, Pa.

DEAR SIR:

Referring to your letter of August 2nd to Messrs. Warren, Jones & Gratz:—

I have called up Mr. P. L. Wooster, P. A. of the Federal Sugar Refining Co., and offered them 3,000 bundles of Ties, which is all they talk about wanting.

I have also called up Messrs. Young and Metzner from whom you recently had a letter, and offered them 10,000 bundles.

Enclosed find copies of letters written in confirmation to each of these concerns.

I doubt if either will buy any Ties, but we are putting ourselves on record as offering them all they talk about wanting.

Yours truly,

AG:W (Signed) ANDERSON GRATZ.
Enc.

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In the Supreme Court of the United States.

OCTOBER TERM, 1919.

FEDERAL TRADE COMMISSION, PETITIONER,

v.

ANDERSON GRATZ AND BENJAMIN GRATZ, copartners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Co.; and Charles O. Elmer, respondents.

No.—.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE PETITIONER.

STATEMENT.

This case comes up on a petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Second Circuit, rendered in the above-entitled case on the 14th day of May, 1919, which judgment set aside an order of the Federal Trade Commission, requiring respondents to cease and desist from certain alleged unfair methods of

competition. The writ was granted on the 20th day of October, 1919.

The findings and conclusion are set forth in the appendix to this brief.

The Federal Trade Commission issued a complaint against the above-named respondents, calling on them to show cause why they should not be required to desist from certain unfair methods of competition against other manufacturers and distributors of jute bagging, sugar-bag cloth, and rewoven second-hand bagging.

The facts are that respondents, Warren, Jones & Gratz, have their principal office and place of business in the city of St. Louis, Mo. Respondents, P. P. Williams & Company, are a copartnership, with principal place of business at Vicksburg, Miss., and respondent, C. O. Elmer, has his place of business in New Orleans, La. All are engaged in interstate commerce in the United States in the sale and distribution of steel ties used for the binding of bales of cotton and jute bagging used for covering the bales. Williams & Company and Elmer are the general selling and distributing agents for the steel ties manufactured by the Carnegie Steel Company, amounting to 59 per cent in 1916 and 65 per cent in 1917, respectively,[1] of all those used in the

[1] By an inadvertent typographical error the findings stated the amount of steel ties manufactured by the Carnegie Steel Company to be 75 per cent of all those used in the cotton baling business in the Southern States. This error was corrected in the brief and was called to the attention of the court in oral argument by the chief counsel of the commission. Subsequently when the petition for writ of certiorari and brief were prepared there was a new chief counsel, and in preparing his brief he reproduced the error as found in the findings in the record.

cotton baling business in the Southern States, and are the general selling and distributing agents of the American Manufacturing Company, which produces 45 per cent of all the jute bagging for said purposes. Anderson Gratz, of the firm of Warren, Jones & Gratz, was one of the active officers and one of the vice presidents of the American Manufacturing Company.

The firm of Mente & Company, of New York City and New Orleans, distributes material known as sugar-bag cloth in the cotton-growing States, which is used for wrapping cotton bales. The Carolina Bagging Company of North Carolina sells and distributes throughout the cotton-growing States the material known as rewoven bagging, which is also sold by other corporations.

Warren, Jones & Gratz and the other respondents had within the last three years previous to filing of the complaint adopted and practiced the policy of refusing to sell steel ties to those dealing with them unless they also purchased a corresponding amount of jute bagging.

The Carnegie Steel Company dominates the steel tie situation to such a degree that it fixes and controls the price of ties throughout the United States. The Ludlow Manufacturing Association, of Boston, Mass., manufactures and sells jute bagging to the extent of about 20 per cent of the amount used. There is also secondhand and sugar-bag cloth used in the industry amounting to 35 per cent of the total.

Respondents in many instances refused to sell to purchasers ties unless they bought a corresponding amount of bagging, and purchasers were compelled to buy bagging in order to get ties.

The Commission found that the refusal to sell steel ties to purchasers unless they bought jute bagging was an unfair method of competition in interstate commerce against other manufacturers, dealers, and distributors of jute bagging, sugar-bag cloth, and rewoven secondhand bagging in violation of the provisions of section 5 (Appendix, p. 59) of an act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (38 Stat., Chap. 311, p. 719), and ordered the respondents to cease and desist from the said policies and practices.

An appeal was taken by respondents to the United States Circuit Court of Appeals for the Second Circuit, under the Federal Trade Commission Act.

That statute provides that the findings of fact of the Commission are conclusive if supported by testimony.

The Commission's findings of fact and its conclusion are, in part, as follows:

> *Paragraph 2.*—That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners doing business under the firm name and style of P. P. Williams & Com-

pany; and C. O. Elmer adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging * * *.

Paragraph 4.—* * * The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties also to buy from them bagging manufactured by the American Manufacturing Company, and in many instances said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging, and such purchasers were oftentimes compelled to buy bagging manufactured by the American Manufacturing Company from said respondents in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

CONCLUSIONS OF LAW.

That the methods of competition set forth in the foregoing findings as to the facts, in paragraphs 1, 2, 3, and 4, and each and all of them, are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers, and distributors of jute bagging and against other dealers and distributors in the material known as sugar bag cloth, and against manufacturers, dealers, and distributors of the bagging known as rewoven bagging and secondhand bagging, in violation of the provisions of section 5 of an

act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of section 3 of an act of Congress known as the Clayton Act.

The court held that—

> There is testimony to support the findings of fact, and therefore the question before us is whether they do support the Commission's conclusion of law that the method of competition forbidden is unfair within the meaning of section 5 of the act of September 26, 1914. (Record, p. 480.)
>
> * * * * *
>
> That unfair methods of competition between individuals are not contemplated by the act. * * * We think the unfair methods, though not restricted to such as violate the antitrust acts, must be at least such as are unfair to the public generally. It seems to us that section 5 is intended to provide a method of preventing practices unfair to the general public and very particularly such as if not prevented will grow so large as to lessen competition and create monopolies in violation of the antitrust acts. (Record, p. 480.)
>
> As we think there is no evidence to support any general practice of the respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of the American Manufacturing Company's bagging

and that the Commission has no jurisdiction to determine the merits of specific individual grievances, the order is reversed. (Record, p. 482.)

The petitioner maintains that the substantive law under which it functions is analogous to that which the the Interstate Commerce Commisssion administers, and that the Federal Trade Commision should be accorded the same discretion in determining whether a method of competition is unfair as has been held by this court to be the discretion of the Interstate Commerce Commission in determining what is an unreasonable rate or an unjust practice; that in the light of decisions in "nonreparation" interstate commerce cases it is not within the province of the lower court to review the ultimate finding of an unfair method of competition by the petitioner where there is testimony to support the finding, unless there is a constitutional question involved, the Commission has exceeded its delegated authority, or has acted arbitrarily; that the court erred in reversing the petitioner's order since none of the three foregoing exceptions were involved; that as there was evidence to support the findings they were conclusive; that said court also erred in setting aside said order on the ground that there was no "general practice" affecting the public shown by the evidence since the statute does not permit of a review of the evidence on such grounds; that the record, however, does contain evidence of a general practice affecting the public.

ASSIGNMENTS OF ERROR.

The petitioner hereby assigns the following errors in the opinion and judgment of the Circuit Court of Appeals:

(1) In setting aside the order of the Federal Trade Commission;

(2) In setting aside the order of the Commission when the findings were supported by testimony;

(3) In reviewing and weighing the evidence and setting aside the order of the Commission when the findings were supported by testimony;

(4) In holding that the findings did not support the ultimate fact of an unfair method of competition in commerce in violation of the provisions of section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

(5) In holding that the findings of fact and conclusion should be set aside on the ground that the Federal Trade Commission does not have jurisdiction of an act involving an unfair method of competition in commerce unless a "general practice" affecting "the public generally" is established by the evidence;

(6) In holding that the Commission does not have jurisdiction to entertain cases involving unfair methods of competition between individual competitors.

BRIEF OF ARGUMENT.

First.

The finality of the findings of fact and conclusion of the Federal Trade Commission, "when supported by testimony," is similar to the finality attributed by this Court to the Interstate Commerce Commission's findings and conclusions in "nonreparation" cases.

Second.

The Circuit Court of Appeals was without jurisdiction to set aside the order of the Federal Trade Commission.

Third.

The decision of the Circuit Court of Appeals for the Second Circuit is in conflict with the opinion of Judge Baker in the Seventh Circuit in the case of *Sears, Roebuck & Company, petitioner,* v. *Federal Trade Commission,* 258 Federal 307.

Fourth.

The Court erred in holding that "there was no evidence to support any general practice of respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of bagging." (Record, p. 481.)

Fifth.

The manner of sale and distribution of ties and bagging followed by respondents is known as "full-line forcing," and is economically an unfair method of competition, under the public policy evidenced by the Federal statutes.

ARGUMENT.

FIRST.

The finality of the findings of fact and conclusion of the Federal Trade Commission, "when supported by testimony," is similar to the finality attributed by this Court to the Interstate Commerce Commission's findings and conclusions in "non-reparation" cases.

The discussion in this case revolves around the substantive law in the Federal Trade Commission Act contained in the following language of Section 5: "that unfair methods of competition in commerce are hereby declared unlawful." The foregoing phrase is analogous to that part of section 1 of the Interstate Commerce Act, which is as follows: "and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful." (34 Stat., ch. 3591, p. 584.)

In view of the fact that the Federal Trade Commission Act, and particularly the substantive part dealing with unfair methods of competition, was fashioned by Congress after the substantive part of the Interstate Commerce Commission Act dealing with "unjust and unreasonable" charges, attention is here called to the history of the passage of the Federal Trade Commission Act, in order to demonstrate wherein the two acts parallel.

The undisputed declarations in the debates showing that Congress was attempting to create a com-

mission to handle unfair methods of competition in commerce similar to that of the Interstate Commerce Commission in its control of "unjust and unreasonable" rates are too numerous to set forth in a brief. (An index to the debates on this subject will be found in the appendix herein.)

Light may be obtained from other congressional sources. In the Sixty-second Congress, Senate resolution No. 98 (62d Cong., 3d sess., Rept. No. 1326), authorized the Committee on Interstate Commerce to report to the Senate changes in the laws necessary to the creation and control of corporations engaged in interstate commerce. In response to the resolution hearings were held and a report made on the 26th day of February, 1913 (S. Rept. 1326, 62d Cong., 3d sess., by Senator Cummins). In commenting on that report Senator Cummins said as follows:

> Every lawyer understands that we can not delegate to a commission legislative power; that when we give to an administrative body the execution of a law of Congress we must at the same time give it a standard, a guide and rule which it is to apply to the particular case and determine whether that particular case falls under the prohibition of the law. * * * Thus in the Interstate Commerce Commission act we declared that a common carrier shall not charge an "unreasonable" rate for the transportation of persons or property. What is an unreasonble rate Congress has not attempted to determine, but has vested the Interstate Commerce Commission with the authority to ex-

amine and then to determine whether a particular rate is or is not a reasonable and just rate. It might be at once said that the Interstate Commerce Commission has the authority by a majority vote to declare any rate that it may see fit to declare a just and reasonable rate, or otherwise, but that is not expressing it in the form of law. The office of the Interstate Commerce Commission is to ascertain, through an investigation and hearing, whether a particular rate is a reasonable charge for the service rendered by a common carrier. Just so, here we have given in this connection to the Trade Commission a standard, a rule, which is just as well understood in the law as were the words "reasonable rate." It is just as easy to turn either to the civilized sense of mankind or to the law of the land and ascertain what "unfair competition" is as it is to ascertain what a "reasonable rate" is. (Cong. Rec. pp. 11103–4;13045–6;13046–8;13049–51.)

No legislation resulted, but on June 13, 1914, Senator Newlands, chairman of the Committee on Interstate Commerce, and author of the Federal Trade Commission Act, submitted a report to the Senate, to which was appended H. R. 15613, a bill to create an interstate trade commission, etc., passed by the House of Representatives on the 5th day of June, 1914. He reported as a substitute for the House bill Senate bill No. 4160, with added provisions regarding unfair competition as contained in the present Federal Trade Commission Act. In his report Senator Newlands refers to the

expressions of Senator Cummins in the latter's report.

Senator Newlands on the floor of the Senate in explaining his bill referred to the Interstate Commerce Act, and in discussing the phrase "reasonable rate," said that "the determination of what the word 'reasonable' meant was submitted to the Interstate Commerce Commission, just as the meaning of the term 'unfair competition' is here submitted to the Trade Commission * * *."

> Read through the act to regulate commerce and you will find it bristling with just such phrases. (Cong. Rec., 2d sess., 63d Cong., p. 11084.)

As Congress intrusted the Interstate Commerce Commission with power to find when a rate was "unjust" or "unreasonable," so in the Federal Trade Commission Act it empowered the Commission to determine what was an "unfair method of competition." This is clearly evidenced in the reports of the committees in the House and Senate.

In the report of the Committee on Interstate Commerce submitted by Senator Newlands on June 13, 1914 (Rept. No. 597, 63d Cong., 2d sess., p. 13), it is said:

> The committee gave careful consideration to the question as to whether it would attempt to define the many and variable unfair practices which prevail in commerce and to forbid their continuance or whether it would, by a general declaration condemning unfair practices, *leave*

> *it to the Commission to determine what practices were unfair.* It concluded that the latter course would be the better, for the reason, as stated by one of the representatives of the Illinois Manufacturers' Association, that there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.

In the statement of the managers on the part of the House, submitted with the conference report on September 4, 1914 (Rept. No. 1142, 63d Cong., 2d sess., p. 19), it was stated:

> It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known unfair practices were specifically defined and prohibited it would be at once necessary to begin over again. If Congress were to adopt the method of definition it would undertake an endless task. It is also practically impossible to define unfair practices so that the definition will fit business of every sort in every part of this country. Whether competition is unfair or not generally depends upon the surrounding circumstances of the particular case. What is harmful under certain circumstances may be beneficial under different circumstances.

The Interstate Commerce Act and the Federal Trade Commission Act then are analogous in the following respects.

Section 5 of the Federal Trade Commission Act provides that, "the commission is hereby empowered

and directed to prevent persons, partnerships, or corporations, except banks and common carriers, subject to the acts to regulate commerce, from using unfair methods of competition in commerce."

Section 12 of the Interstate Commerce Act provides that, "the commission is hereby authorized and required to execute and enforce the provisions of this act." By section 15 the Interstate Commerce Commission there is given general authority to enforce the various provisions of the Interstate Commerce Act by making orders to cease and desist. (*Balto. & Ohio R. R.* v. *U. S. Ex. Rel. Pitcairn Coal Co.*, 215 U. S. 481, 499.) Likewise the Federal Trade Commission is authorized to make orders to cease and desist in cases which in the opinion of the Commission fall within the general rule of substantive law regarding unfair competition. The findings of the Federal Trade Commission as to facts, if supported by testimony, are conclusive.

To recapitulate, it was the intention of Congress to regulate the operations of carriers by the Interstate Commerce Act, and by the Federal Trade Commission act to regulate the operations and transactions of persons, firms, and corporations other than banks and carriers. To one was delegated the regulation of "unjust and unreasonable" practices; and to the other "unfair" methods. In neither case did Congress attempt to define what was "unjust, unreasonable," or "unfair." In both cases the duty of deciding what comes within these general terms was confided to a commission.

The orders of the Interstate Commerce Commission "may be suspended or set aside by a court of competent jurisdiction." Those of the Federal Trade Commission may be "affirmed, modified, or set aside."

In view of these points of substantial similarity it is maintained that the two acts are in pari materia, and that in construing and interpreting the Federal Trade Commission Act the court should apply the rule where the language parallels that has been applied in interpreting similar language in the Interstate Commerce Act.

In considering the decisions of this court reference will be made only to "nonreparation" cases, since the Federal Trade Commission has, concededly, no jurisdiction to compel reparation.

In *Kansas City Southern Railway Company* v. *United States*, 231 U. S. 423, Mr. Justice Pitney stated the rule as follows (p. 439):

> The authority conferred by Congress upon the Commerce Court (act of June 18, 1910; 36 Stat. 539, c. 309; Judicial Code, par. 207) with respect to enjoining or setting aside the orders of the Commission, like the authority previously exercised by the Federal Circuit Courts, *was confined to determining whether there had been violations of the Constitution, or of the power conferred by statute, or an exercise of power so arbitrary as virtually to transcend the authority conferred.* [Italics ours.]

In *Pennsylvania Company* v. *United States*, 236 U. S. 351, Mr. Justice Day reiterates the rule (p. 361):

> This section forbids any undue or unreasonable preference or advantage in favor of any person, company, firm, corporation, or locality; what is such undue or unreasonable preference or advantage is a question not of law, but of fact. (*Texas & Pacific Ry.* v. *Interstate Commerce Commission*, 162 U. S. 197, 219; *Interstate Commerce Commission* v. *Alabama Midland Railway*, 168 U. S. 144, 170.) If the order made by the Commission does not contravene any constitutional limitation and is within the constitutional and statutory authority of that body, and not unsupported by testimony, it can not be set aside by the courts, as it is only the exercise of an authority which the law vests in the Commission.

In *Manufacturers Railway Company* v. *United States*, 246 U. S. 457, the rule that administrative orders of the Interstate Commerce Commission may not be disturbed by the courts except upon a showing that they are unsupported by evidence, made arbitrarily, exceed delegated authority, or that a constitutional question is involved, is stated in the following language (p. 481):

> Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission (*Interstate Commerce Commission* v. *Alabama Midland*

> *Ry. Co.*, 168 U. S. 144, 170), and upon which its decisions, made the basis of administrative orders operating in futuro, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed constitutional limits, or for some other reason, amount to an abuse of power.

This court, alluding to the fact that no definitions have been attempted, has nevertheless held that the determination of what is "reasonable" or unreasonable" is a question of fact in a given case and is for the determination of the Interstate Commerce Commission.

> *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 455;
>
> *Pennsylvania R. R. Co.* v. *International Coal Co.*, 230 U. S. 184, 196;
>
> *Mitchell Coal & Coke Co.* v. *Pennsylvania R. R.*, 230 U. S. 247, 257, 259;
>
> *Pennsylvania Company* v. *United States*, 236 U. S. 351, 361;
>
> *Manufacturers Ry. Co.* v. *United States*, 246 U. S. 457.

The rule laid down in Interstate Commerce Commission decisions should be applied in Federal Trade Commission cases, since the discretion of the Federal Trade Commission, in determining whether an unfair method of competition exists, is analogous to that of the Interstate Commerce Commission. When, therefore, the findings are "supported by evidence," the only grounds upon which the Circuit Court of Appeals reviews Federal Trade

Commission findings are the three exceptions enumerated in the decisions of this court in "non-reparation" cases.

In its procedure the Federal Trade Commission finds certain evidentiary facts upon which it bases an ultimate fact or conclusion. The findings indicate the "method." This method may rest upon conflicting evidence. So long as the findings are "supported by testimony" they should not be reviewable except as hereinbefore stated.

> *It may be conceded that the evidence would have warranted a different finding;* indeed the first report of the Commission was to the contrary; *but to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative, and this can not be done.* [Italics ours.] (*Manufacturers Railway Company* v. *United States,* 246 U. S., 457, 482.)

Having found the "method" the Commission determines the ultimate fact as to whether it is "unfair," and hence to be prohibited. This is nothing more than arriving at a conclusion as to whether the evidentiary facts are comprehended within the phrase "unfair methods of competition in commerce." To do this the commissioners "exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or tendency to injure competitors directly

or through deception of purchasers, quite irrespective of whether the specific practices in question have yet been denounced in common-law cases." (*Sears, Roebuck & Co.* v. *Federal Trade Commission*, supra.)

The Circuit Court of Appeals does not assert that there is a constitutional question involved in this case, nor that in passing on the question of the unfairness of the method the Commission has acted beyond the scope of its authority, nor arbitrarily. Said court, however, did undertake to review the evidence and to determine whether or not the facts proven disclosed a practice that was "unfair," which the Commission maintains is alone for it to determine.

The finding that the method practiced was "unfair" was a further finding of fact in addition to those already found. It involved finding the effect of the acts done as to competitors. It is not disputed that there was evidence pointing to an unfair result. Hence the Circuit Court of Appeals necessarily found the *fact* of "unfairness" for itself and ignored the Commission's finding of such *fact*.

SECOND.

The Circuit Court of Appeals was without jurisdiction to set aside the order of the Federal Trade Commission.

The jurisdictional and procedural part of the Federal Trade Commission Act is set forth in section 5. The first paragraph, stating that "unfair methods of competition in commerce are hereby declared unlawful," is the only substantive law in the act. The second paragraph carries with it the delegation of power to the Commission to enforce the act. The third paragraph contains the procedural part of the act relating solely to the Commission; and the fourth paragraph contains the procedure by which the acts of the Commission may be reviewed by the Circuit Court of Appeals.

It is proposed to measure the decision of the circuit Court of Appeals in setting aside the order of the Commission with the language in these four paragraphs of section 5.

A. What the Court Actually Did by its Order.

As a preliminary to this step, it is necessary first to understand on what grounds the court nullified the Commission's order. In its opinion (Record, p. 480) it declared that "there is testimony to support the findings of fact." Since the determination of whether the acts complained of were unfair is an administrative question, the statement of the court

that the findings were supported by testimony should have foreclosed it from reviewing the Commission's finding of the ultimate fact that the practices complained of were unfair methods of competition within section 5 of the statute.

> *Illinois Central R. R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 455;
>
> *Pennsylvania R. R. Co.* v. *International Coal Co.*, 230 U. S. 184, 196;
>
> *Mitchell Coal & Coke Co.* v. *Pennsylvania R. R. Co.*, 230 U. S. 247, 257, 259.

The court, however, while admitting that the findings of primary facts were supported by testimony, found that the Commission's ultimate finding namely that the method of competition forbidden was unfair, was not within the meaning of section 5 of the Federal Trade Commission Act. To do this, it apparently ignored paragraph 4 of the findings of fact, and sought to reduce it to a finding of merely individual transactions, holding that the Commission did not have jurisdiction over such transactions.

Paragraph 4 of the findings of fact (Record, p. 47) states in part:

> That a great many merchants, jobbers, and dealers in bagging and ties throughout the cotton-growing States were many times unable to procure ties from any other firm, except Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz, or their said agents, P. P. Williams, W. H. Fitzhugh,

and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, and that the said respondents sold and distributed such a large proportion of the entire amount of such ties manufactured and sold in the entire cotton growing section of the country, that they, the said respondents, had what amounted to a monopoly of the cotton tie business of the country, controlling and distributing such a large proportion of the entire output of cotton ties that cotton growers found it impossible to bind the cotton grown and produced in the Southern States without applying to and purchasing from the said respondents and their agents almost the entire output of such ties manufactured by the Carnegie Steel Company. The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Company, and, in many instances, said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were oftentimes compelled to buy bagging manufactured by the American Manufacturing Company, from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

Despite the language in said paragraph 4, and the court's statement that "there is testimony to support

the findings of fact," in a subsequent paragraph of its opinion (Record, p. 481) the court said:

> And we discover no evidence to support the finding in paragraph 2 that the respondents "adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging." It is the natural and prevailing custom in the trade to sell ties and bagging together, just as one witness testified it is to sell cups and saucers together. Such evidence as there is of a refusal to sell is a refusal to sell at all to certain persons with whom the respondents had previous unsatisfactory relations and a refusal to sell ties without bagging at the opening of the market in 1916 and 1917 when there was fear that owing to the scarcity of ties and the prospect of large crops, the marketing of the cotton crop might be endangered by speculators creating a corner in ties. The evidence is that with these exceptions the respondents sold ties without any restrictions to all who wanted to buy and indeed made extraordinary efforts to induce the manufacturers of ties to increase their output so that all legitimate dealers and all cotton raisers should get enough ties and bagging at reasonable rates to market their cotton. It is only these exceptional and individual cases, which established no general practice affecting the public, that can sustain the findings in paragraph 4.

The mere placing of the above paragraph in juxtaposition with the earlier part of the opinion, wherein it is stated "there is testimony to support the findings of fact," presents a contradiction. In the first instance the court recognizes apparently that it is foreclosed by the statute from rejecting the Commission's findings, but subsequently reviewing the testimony deletes the findings of a general practice and declares that they do not support the conclusion which the Commission draws in its ultimate finding, and one that the court holds the Commission had no right to find.

In substance, then, the court said that conduct, illegal if applied to all, can not be forbidden if applied simply to numerous transactions; that though there is evidence to support the findings, yet the court will weigh the evidence, and if it finds exceptions to the illegal conduct it may so declare them of such weight as to nullify the sufficiency of the testimony and prevent the Commission, as a matter of law, from finding that an unfair method of competition had been practiced.

The court said—

> * * * it seems to us that unfair methods of competition between individuals are not contemplated by the act (Record, p. 480); * * * it is only these exceptional and individual cases, which established no general practice affecting the public, that can sustain the findings in paragraph four (Record, p. 481); * * * it seems to us that section 5

> is intended to provide a method of preventing practices unfair to the general public (Record, pp. 480, 481); * * * as we think there is no evidence to support any general practice of the respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of the American Manufacturing Company's bagging and that the Commission has no jurisdiction to determine the merits of specific individual grievances, the order is reversed. (Record, p. 482.)

B. The Commission is not required to find a general practice.

Conceding for the sake of the argument only that there was no general practice found by the Commission, it is maintained that a correct reading of section 5 demonstrates that the Court had no authority to set aside the Commission's order.

The substantive part of the section contains no language intimating that the Commission must find a general practice. It says "that unfair methods of competition in commerce are hereby declared unlawful." Had Congress intended to require the finding of a general practice, it would have amended the language so as to read "a general practice of unfair methods of competition."

Moreover, in the second paragraph where the authority is delegated to the Commission to enforce the act, the thing to be prevented would have been a "general practice" of "unfair methods of competition" instead of the unqualified phrase "unfair methods."

Again, in the procedural and administrative part of section 5, in the third paragraph, where the Commission is authorized to issue a complaint when any "unfair method of competition" is practiced, it would have read under the court's definition "a general practice of *any* unfair method." The word "any" would seem to be broad enough to comprehend all unfair methods. This is apparently the way in which the Circuit Court of Appeals for the Seventh Circuit interpreted the act in the case of *Sears, Roebuck & Company* v. *Federal Trade Commission* (*supra*), where Judge Baker said:

> The Commissioners, representing the Government as parens patriae, are to exercise their common sense, as informed by their knowledge of the general idea of unfair trade at common law, and stop *all those trade practices that have a capacity or tendency to injure competitors* directly or through deception of purchasers.

This court in giving definition to unfair methods of practice in commerce has not limited them to acts affecting the public generally or practiced generally. In Hitchman Coal & Coke Co. *v.* Mitchell et al., 245 U. S. 229, 259, Mr. Justice Pitney, speaking for the court in part, said:

> Defendants' acts can not be justified by any analogy to competition in trade. They are not competitors of plaintiff; and if they were their conduct exceeds the bounds of fair trade. Certainly, if a competing trader should

endeavor to draw custom from his rival, not by offering better or cheaper goods, employing more competent salesmen, or displaying more attractive advertisements, but by persuading the rival's clerks to desert him under circumstances rendering it difficult or embarrassing for him to fill their places any court of equity would grant an injunction to restrain this as unfair competition.

Standard Oil Co. v. *United States*, 221 U. S. 1, 42–43;

International News Service v. *Associated Press*, 248 U. S. 215.

C. If the Commission or Courts were to determine that an "unfair method" affected the public they would be usurping a legislative function already exercised by Congress when it declared unfair methods to be unlawful.

The lower court holds that there must be evidence to support a finding that the "unfair methods" complained of affected the public generally. When Congress declared "unfair methods of competition in commerce * * * unlawful," it thereby declared that such unfair methods between individuals affected, to its injury, the public generally. By its fiat Congress made them unlawful. It did so because they were against public policy. Had not "unfair methods of competition" affected the "public generally" Congress would not have outlawed them. Having done so, it relieved the Commission of the necessity of so finding, and hence of introducing evidence to prove facts upon which such a finding could be made.

Undoubtedly Congress looked at this question just as a legislative body does when it makes certain acts a crime, or puts a penalty on certain acts, i. e., qui tam statutes.

Legislatures penalize certain acts because they affect the public generally. The district attorney, however, when prosecuting under such statutes does not have to prove that the act affects the public, nor show why Congress declared it unlawful. No more is the Federal Trade Commission required to show that an "unfair method" affects the public.

This is evidenced by the language in the procedural part of section 5, wherein it is declared that "if upon such hearing the Commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing in which it shall state its findings as to the facts, etc. * * *." There is nothing in this language requiring the Commission to find that the "unfair method affects the public generally." All it requires is that the Commission shall find whether the method was unfair.

D. Congress granted the Commission discretion as to when it should proceed against one charged with unfair methods of competition.

Congress, however, desired to give the Commission discretion as to when it should issue a complaint, and hence it incorporated in section 5 the following phrase:

> *Whenever the Commission shall have reason to believe* that any such person, partnership,

> or corporation has been or is using any unfair method of competition in commerce, and *if it shall appear to the Commission that a proceeding by it in respect thereof* would be to the interest of the public, it shall issue * * * a complaint.

The phrase, "if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public," was inserted to protect the Commission in its administration of the law. Congress undoubtedly saw that the Commission would be deluged with many complaints. This has been the fact. In the great majority of cases the charge is against only one competitor. The purpose of Congress was to give the Commission a discretion so that it could sift out of the applications for complaints those of minor importance. In this way the Commission could escape a deluge and give its time to those of greater importance. Had it not been for this discretion the Commission by the very word "shall" in the act would have been compelled to issue a complaint whenever an application was made. Under the beneficient discretion granted to it in the procedural part of the act just quoted it has been made physically possible to attend to the work of the Commission. It will be further noted that this discretion lodged in the Commission is in the administrative part of the section, and not in the jurisdictional or substantive part.

The administrative part of section 5 says that—

> whenever the Commission shall have reason to believe * * * that a proceeding by it in respect thereof would be to the interest of the public * * *.

Thus it is that the Commission and it alone determines when a proceeding will be in the interest of the public before it issues the complaint.

E. The Circuit Court of Appeals reviewed acts within the discretion of the Commission.

The fourth paragraph of section 5 relates to the matters to be reviewed by the Circuit Court of Appeals when an appeal is taken from the Commission's order. The language is

> upon such filing of the application and transcript, the court shall cause notice thereof to be served upon such person, partnership, or corporation, and thereupon shall have jurisdiction of the proceeding and of the question determined therein.

The word "proceeding" and the words "question determined therein" refer back to the procedural part of section 5, set forth in the third paragraph. There the proceeding begins with the issuance of a complaint. The complaint follows after the Commission has affirmatively resolved two propositions, namely: that it has reason to believe that an unfair method of competition has taken place and that it would be in the interest of the public to issue the complaint.

While the Commission follows rules of its own in resolving these two questions, the action against the respondent does not begin until a complaint issues and is served on respondent.

After the complaint issues the procedural section requires the Commission to take testimony, at which time the respondent is allowed to cross-examine witnesses of the Commission and to put in its own testimony, and the testimony is reduced to writing and a hearing held.

"If upon such hearing the Commission shall be of the opinion that the method of competition is prohibited by this act," it makes its findings and issues an order against the respondent. The action of the Commission to be reviewed begins with the complaint and ends with the order to cease and desist.

In the present case the court invaded the discretionary domain granted to the Commission by Congress at that stage previous to the issuance of the complaint where the Commission determines whether it has reason to believe that an unfair method of competition has been practiced and whether "a proceeding by it * * * would be to the interest of the public," and said in substance that the Commission had no right to issue the complaint since in the opinion of the court the public was not affected generally.

THIRD.

The decision of the Circuit Court of Appeals for the Second Circuit is in conflict with the opinion of Judge Baker in the Seventh Circuit in the case of Sears, Roebuck & Company, petitioner, v. Federal Trade Commission (supra).

The lower court's attention was called to the *Sears, Roebuck & Company* case, but it declared that—

> the practice there prohibited as unfair was extensive advertising containing false and misleading statements calculated to deceive all purchasers and to discredit all competitors. It was clearly a method unfair to the public generally,

and hence there was a public interest involved, whereas in the case at bar no such showing was made, and, therefore, there was no public interest involved. It is a debatable question as to whether the advertisements of Sears, Roebuck & Company were reaching as large a public and affecting as many people as were affected by the respondents, who were holding a dominant and controlling position in the sale and distribution of steel ties to the extent of about 65 per cent, and also were distributing 45 per cent of the jute bagging used in the cotton industry of the South. At best the question is doubtful. If one were to hazard a guess the preponderance might lie in favor of a greater part of the public being

ultimately affected by the control of the distribution of steel ties and jute bagging.

The lower court has also said that—

> no authority is given to any individual to present his grievances and the Commission is to interpose only in the interest of the public.

The Commission has been unable to find anything in the law that forbids it to act upon the complaint of an individual against a single competitor, if it appears to it that there is disclosed a method of unfair competition. The language of Judge Baker in the *Sears, Roebuck & Company* v. *Federal Trade Commission* case, states the position of the Commission very clearly, where he says:

> The Commissioners are not required to aver and prove that any competitor has been damaged or that any purchaser has been deceived. The Commissioners, representing the Government as parens patriae, are to exercise their common sense as informed by their knowledge of the general idea of unfair trade at common law, and stop all those trade practices that have a capacity or a tendency to injure competitors directly or through deception of purchasers quite irrespective of whether the specific practices in question have yet been denounced in common law cases.

The words of Chief Justice Fuller in *Loewe* v. *Lawlor* (208 U. S. 274, 294–295) states the principle at common law where he says:

> * * * and there is no doubt that (to quote from the well-known work of Chief

> Justice Erle on Trade Unions) at common law *every person* has individually, and the public also has collectively, a right to require that the course of trade should be kept free from unreasonable obstruction.

If the Commission has the jurisdiction to "stop all those trade practices that have a capacity or a tendency to injure competitors directly," then surely it had the authority to order the respondents in the instant case to cease where they held a dominating position and refused to sell steel ties except where a corresponding amount of jute bagging was bought. The capacity or tendency to injure the competitor who has only jute bagging to sell, which might be of a better or equal quality, but which would be lost in competition with respondents because of respondent's ability to sell owing to the control of steel ties, is so obvious that it does not need elucidation. Such an actual power, coupled with such a practice as it set forth in a letter dated June 24, 1916, to Messrs. P. P. Williams & Company, from Warren, Jones, & Gratz, in which it says:

> Do not sell any ties to any one without bagging to match, as we do not propose to furnish buyers of sugar bags any ties if we can help it. * * * In this way we may possibly be able to control [*y*] supply and prices to some extent. * * * (Record, p. 261.)

must eventually restrain trade and create a situation in which the public is interested.

If the purpose of the Federal Trade Commission Act, as was often reiterated in the debates in Congress, was to stop at their inception practices which led up to restraint of trade, or a tendency to monopolize, the Federal Trade Commission must have the authority to stop all trade practices "that have a capacity or tendency to injure competitors directly," and the public eventually. This, it would appear from the language of the act, the reports and the debates that Congress intended to give to the Commission.

FOURTH.

The Court erred in holding that "there was no evidence to support any general practice of respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of bagging." (Record, p. 481.)

There is no contention on the part of the court that the method of compelling those wishing to buy steel ties to also purchase jute bagging is not unfair. It is only that the testimony did not prove a general practice affecting the public, and that hence the Commission's finding that the unfair method was contrary to section 5 of the Federal Trade Commission Act was erroneous. The Commission maintains that the lower court did not have the power to review the findings on this ground, but if this court should decide otherwise, the Commission submits evidence showing a general practice.

The letter dated St. Louis, Missouri, June 24, 1916, to Messrs. P. P. Williams & Company from Warren, Jones & Gratz, exemplifies a general practice:

> WARREN, JONES & GRATZ,
> *St. Louis, Mo., June 24, 1916.*
>
> Messrs. P. P. WILLIAMS & Co.,
> *Vicksburg, Miss.*
>
> GENTLEMEN: * * * Do not sell any ties to anyone without bagging to match, as we do not propose to furnish buyers of sugar bags any ties if we can help it.

You will have to be very careful about sales, as there is a disposition on the part of buyers to overbuy, and as the supply of bagging and ties this year will be limited, we will have to be very careful not to sell too much to any one party at these opening prices. In this way we may possibly be able to control [y] supply and prices to some extent. * * *

Yours, very truly,

WARREN, JONES & GRATZ.

(Record, p. 261.)

Later—

Messrs. P. P. WILLIAMS & COMPANY,
Vicksburg, Mississippi.

GENTLEMEN: * * * These ties to be sold in every instance only to people who buy at least 30 yards of bagging with each bundle of ties, for the same shipment as the ties.

You must be very careful and not let people like Goyer pick you up on ties without a proportionate quantity of bagging.

As to bagging, do not sell over 1,000,000 yards without further instructions from us, as there is a strong probability of an early advance in both bagging and ties.

Yours, very truly,

WARREN, JONES & GRATZ.

(Record, p. 262.)

WARREN, JONES & GRATZ,
St. Louis, Mo., June 24, 1917.

P. P. WILLIAMS & COMPANY,
Vicksburg, Mississippi.

GENTLEMEN: Last year we sold the Goyer Company a round lot of ties. Please do not

sell them any ties this year except with a proportionate quantity of bagging, as every bundle of ties we see in sight will be needed to go with our bagging, and we do not want to supply people with ties who are using bagging purchased of others. Therefore we shall not write Goyer offering them any ties except with bagging.

Yours, truly,

WARREN, JONES & GRATZ,

(Record, p. 262.)

Mr. H. R. MURRAY,

c/o Warren, Jones & Gratz, St. Louis, Mo.

DEAR SIR: Mr. Taylor, of the Goyer Company, tells me that you have at last consented to sell him:

11,000 bdls. ties.

125,000 yards bagging.

I am glad you did this, and I advised him to send the telegram which he sent you as he seemed to have so much feeling on the subject, and I felt that as he had bought his ties from you or us every year for the past 8 or 10 years that it was up to us to protect him as far as we could. Now, that he has bought this quantity of bagging and ties from you, we will not push him, particularly on ties, in the territory immediately around Greenville, as we had intended to do if he bought elsewhere. * * *

Yours, very truly,

P. P. WILLIAMS & Co.

(Record, p. 263.)

In substantiation of the general practice, the following excerpts are taken from the testimony of those who were refused cotton ties unless they purchased bagging from the respondents:

Mr. G. O. Korndorffer, of the firm of Rumble & Wensel Co., testified as follows (Record, p. 53, 54, 55):

> A. We have represented the Ludlow folks for, I suppose—well I would say 40 years; at any rate the whole 30 years I have been connected with my firm, in Natchez; and last season, 1916, we had an awful time trying to get ties and we could not get any ties from any so-called independents, or Warren, Jones & Gratz, or P. P. Williams & Co., without buying American bagging, and you will see by the bill there [indicating] that we were forced to buy 100,000 yards of American bagging to get ties.
>
> Q. How much bagging were you required to buy in order to get the 5,000 bundles of ties?
>
> A. 100,000 yards of bagging.
>
> Q. At that time state whether or not you were already supplied with bagging.
>
> A. We were, sir.
>
> Q. What kind of bagging did you have on hand?
>
> A. Ludlow bagging, manufactured in Boston, Mass.
>
> Q. How did the Ludlow bagging compare with the American bagging, at that time, as to quality and price?
>
> A. Well, in our section of the country it has a preference over any other bagging.
>
> Q. Which has the preference?
>
> A. The Ludlow.

Q. How did the price compare with the American bagging?

A. Identically the same.

Q. Would you have bought the American bagging, Mr. Korndorffer, but for the fact that you were forced to buy it in order to get ties?

A. No, sir.

Mr. Charles M. Platter, of the firm of Boren & Stewart Co. (Inc.), introduced the following telegram (Record, p. 92):

POSTAL TELEGRAPH-CABLE CO.

67ks od 52 1132am.

A ST. LOUIS, MO., *June 26, 1916.*

BOREN & STEWART CO.,

Dallas.

Telegram received; will book your order for one hundred thousand yards bagging with thirty-three hundred bundles ties to match, but can not sell you six thousand bundles in addition as our supply of ties is limited; we are not selling ties to anyone except with proportional amount bagging. Answer if satisfactory.

WARREN, JONES & GRATZ.

Mr. Ed Brin, manager of the Brin Store at Terrell, Tex., introduced the following letters (Record, pp. 148, 149):

WARREN, JONES & GRATZ,

St. Louis, Mo., June 24, 1916.

THE BRIN STORE,

Terrell, Texas.

GENTLEMEN: Yours of the 24th. While we shall make our opening prices on bagging and

ties next Monday, we can not at this time offer you any ties except with a proportionate quantity of bagging. In other words, if you buy from us 30,000 yards of bagging, we will sell you 1,000 bundles of ties. It is necessary to handle our business in this way owing to our small supply of ties.

Yours, truly,

WARREN, JONES & GRATZ.

WARREN, JONES & GRATZ,

St. Louis, Mo., June 26, 1916.

THE BRIN STORE,

Terrell, Texas.

GENTLEMEN: Your letter of the 24th. Our supply of ties is limited—barely enough to go with the bagging we will sell. It may be possible that we will have some surplus ties after we get through selling ties with bagging, but this is very uncertain. As you are well aware, all steel manufacturers have been crowded with work for the past year or more, and it has been a difficult matter for us to induce any of them to make ties.

Yours, very truly,

WARREN, JONES & GRATZ.

Mr. Brin also testified as follows (Record, p. 158):

Q. What did they say? Did they say they did not have ties at that time?

A. They said they were short of ties and did not have ties except to match the bagging. That is what they wrote me.

Mr. Paul Kling, secretary of H. & C. Newman (Ltd.), cotton factors of New Orleans, testified as follows (Record, p. 186):

> Q. Tell what that conversation was.
>
> A. Mr. Elmer reported that he could not fill an order for, I think it was, 5,000 bundle of ties which he had taken in the morning of the day in question, because Warren, Jones & Gratz declined to fill the order, because we had not purchased any bagging from them.
>
> Q. Now, will you please state approximately the time in 1916?
>
> A. May or June of 1916.

Mr. Kling also introduced the following telegram received by his company from Warren, Jones & Gratz (Record, p. 186):

> Our supply ties limited; manufacturers say impossible increase output; we must use our limited supply to go with our bagging; we are offering all parties in this way, discriminating against none; therefore can not accept your order three thousand bundles.

In reaching its ultimate finding the Commission had necessarily to take into consideration many facts which it could not set forth in the findings, because of limitation of space. It should be remembered that it was known to respondents and the public that there was every promise in the early part of the season of 1916 of a tremendous cotton crop. This fact is admitted throughout respondents' evidence. The respondents refused to sell ties unless bagging were bought until it was evident that the cotton crop

would be much smaller than expected (Record, 264, 265, 266, 272, 371) and there might be some difficulty in disposing of all the supply of ties. Then the respondents sold ties without bagging. (Record, pp. 66, 100, 269, 270, 363, 365.) This becomes important when considering the claim of the respondents that the parties who were refused ties without bagging finally got all the ties they wanted before they were needed by the farmers.

Since respondents knew in the latter part of the season 1916 that the cotton crop was then a failure, the Commission was well within its rights in giving little weight to the evidence tending to show that respondents sold ties without bagging.

For example, on August 30, 1916, the respondents wrote to P. P. Williams & Co. as follows (Record, p. 264):

> DEAR SIRS: Your letter of the 28th. Your assumption is correct: On account of the short cotton crop we are anxious for bagging and tie business.

In the early part of 1917 there were many refusals to sell ties without bagging, similar to the refusals in 1916. (Record, pp. 108, 115, 120, 126, 136, 137, 272, 273, and 363.) The refusals ceased some time in May, but the records of the Federal Trade Commission show that Mr. Robertson, a representative of the Commission, was in Mississippi by this time investigating conditions in other bagging industries. (Record, pp. 137, 190, 271, and 272.)

That the respondents ceased from objectionable practices in May, or sold ties without bagging at that time, might have been due to the fact that the investigation was pending and the Commission was justified in placing little importance on the temporary cessation of respondents' objectionable methods.

The failure to continue the practice was no reason why the Commission's order to cease and desist should not issue. (*Sears, Roebuck & Co.* v. *The Federal Trade Commission, supra.*)

The explanations of Mr. Gratz as to why he refused to sell to various witnesses who testified in this case that they were unable to buy ties without bagging, were not binding upon the Commission, which, in the rightful exercise of its jurisdiction, was warranted in giving little weight to the testimony of an interested witness or even rejecting it entirely. (Record, p. 342 and following.)

The defense of Mr. Gratz that he was trying to prevent speculation by insisting that those who purchased ties should also purchase bagging when the latter already had bagging was not impressive, for if he was stopping speculation by an unfair method of competition, he was undoubtedly doing more harm to the competitor and the consumer than if speculation went unchecked. Since the respondents admittedly dominated the market and fixed the price on new steel ties, it was difficult to see wherein there was a probability of much speculation.

FIFTH.

The manner of sale and distribution of ties and bagging followed by respondents is known as "full-line forcing," and is economically an unfair method of competition, under the public policy evidenced by the Federal statutes.

This country, having adopted the competitive process in business, has declared by its statutes that the economic struggle of manufacturers and distributors to secure the patronage of customers for their products as the most beneficial method for society. It has come to be accepted that fair methods of competition are based solely upon relative production, selling costs, and efficiency, and that unlawful interference with these essentials of competition constitutes unfairness. Paraphrasing a statement of Mr. Justice Pitney in the case of *International News Service* v. *The Associated Press* (*supra*), unfair competition may well be defined as a process amounting to an unauthorized interference with the normal operation of a competitor's legitimate business.

It is obvious that any method employed in competition which produces such interferences must prevent competitive units from competing as severely as their relative costs and efficiency would warrant, and becomes an "unfair method."

Applying this postulate to the findings of the present case, we have some concerns manufacturing bagging and other entirely distinct organizations en-

gaged in the manufacture of ties. Because of the fact that ties and bagging are used together by the ultimate consumer a practice has grown up whereby manufacturers and dealers in bagging frequently, if not usually, supply both ties and bagging together to the purchaser.

This practice, when purely voluntary, is economically desirable from the standpoint of the purchasers. It is a service feature given in connection with the sale of bagging, whereby the purchaser of bagging and ties is enabled to purchase his requirements for these articles from a single organization instead of being compelled to negotiate independently with a seller of bagging and a seller of ties in order to obtain his requirements.

There is nothing violative of the rule of fair competition in the fact that the sellers of bagging also carry ties to accommodate customers desiring to purchase both.

The circumstances involved in the state of facts presented by this record are, however, entirely distinct from those just described. The innocent practice of selling ties and bagging together, evolved as an economic service feature, was transformed by respondents into a weapon of compulsion. Knowing that there was a scarcity of ties, and admittedly having contracted for 98 or 99 per cent, the greater proportion of the new production of the Carnegie Company, the only heavy producer of such ties, Warren, Jones & Gratz declared that they would

supply ties only where a proportionate amount of bagging was purchased from them by those desiring ties.

The practice of supplying ties with sales of bagging when both are sought and ordered, and of supplying ties only on condition that proportionate amounts of bagging are ordered, is in practical effect as far apart as the two poles. Under the one system there is nothing to interfere with the relative efficiency of the manufacturers and sellers of bagging. Each disposes of his bagging on its merits and supplies ties to the purchaser when and if desired. Each manufacturer and seller may sell his bagging on the basis of his costs, prices, quality, adaptability to the uses of the purchaser, and such incidental service as he may see fit to give, and he does this in competition with other manufacturers and sellers likewise so engaged. Some of these purchasers desire regular grades of bagging, some sugar-bag cloth, others secondhand bagging, and yet others rewoven bagging.

From an economic standpoint all are entitled to buy the class they desire and manufacturers and dealers are entitled to whatever volume of bagging business accrues to them by reason of purchasers' preferences, the prices and service which the manufacturers and sellers afford. This is fair competition on the basis of efficiency, for each competing seller will obtain that proportion of the business to which its relative costs and efficiency entitles it in competition with the relative costs and efficiencies of competing organizations.

This method "is wise and in the interest of the public and should be continued," but it is in marked contrast to respondents' method of selling ties only in proportion to the bagging purchased.

Under respondents' system the prospective purchaser of bagging can not select and purchase bagging as and where he may desire and in accordance with the price, quality, and character of the bagging required and the service afforded by the seller. On the contrary, he is compelled to purchase largely, if not entirely, irrespective of these conditions, and to buy to a greater or less extent from the bagging seller or sellers controlling the necessary ties. Not only does this enable those following this method to make any price they may choose, but it necessarily deprives competitors of bagging business which might, and in many cases would, undoubtedly have gone to them had it been possible for prospective purchasers to have purchased on the basis of the price, quality of the bagging, and service of the sellers, irrespective of the matter of ties.

In the lower court counsel for respondents in his brief carefully italicised the following sentence contained in the letter of Gratz to Wallace of July 7, 1916:

> To gain an advantage on our competitors and guard ourselves from disaster, we should have taken the Carnegie Company's whole 1,400,000 bundles, and would have been glad to do so except for *the broader policy protecting the Carnegie Company's trade by giving ties to anyone who had been their customer in years past.*

One may well consider what would have been the result upon competitors of respondents had the Gratz Company been able to purchase as they "would have been glad to do" the entire Carnegie output, and resold the same solely on condition that proportionate amounts of bagging be purchased therewith. This method counsel for respondents characterizes as "wise," in the interest of the public, and "just to both manufacturer and consumer."

The effect of such a system as that employed by respondents is to force upon various concerns and organizations in greater or less proportions, bagging which they would not purchase under other conditions, thereby depriving other bagging sellers of business which they would otherwise obtain were the bagging purchased upon the basis of its price, quality, and service afforded by the seller. *The method, therefore, is clearly violative of the rule of fair competition because respondents by the employment of this method, obstructed, interfered with, and embarrassed competing bagging manufacturers and dealers in making sales of this product.*

They have in greater or less proportion obtained business not upon the basis of the quality and price of their goods and such services as they might render, but upon the basis of an arbitrary requirement made possible by their control of ties. The unfairness of the method is best illustrated by the letter of Warren, Jones & Gratz to P. P. Williams & Co., dated June 24, 1916, which gave the following instructions:

> Do not sell ties to anyone without bagging to match, as we do not propose to furnish buyers of sugar bags any ties if we can help it.

Thus, from the respondents' own words, this court may learn to what extent, in the language of counsel, "the method adopted by the defendants is proper and just to both manufacturer and consumer."

Under such a practice it is obvious that prospective purchasers of sugar-bag cloth neither can nor will continue to buy that commodity if they can not obtain ties. Instead they will be compelled, under the circumstances, to buy jute bagging from respondents. Such a system is both improper and unjust to sugar-bag manufacturers.

Pursued to its logical conclusion, should respondents retain a large control of the supply of ties, they might well run competitors in bagging out of business and produce a practical monopoly or at least a serious restraint of commerce to the public detriment.

It is maintained that the requirement that a proportionate quantity of American bagging bought with each purchase of ties compelled certain purchasers of bagging to buy not in a free and open market, and in accordance with prices, quality of goods, and incidental services of the sellers, on the basis of their control of ties, and with little or no reference to the elements of quality, price, and service. The effect of this was (*a*) to handicap such purchasers by preventing them from securing the goods which they would have purchased in the

absence of such restrictions; (*b*) to prevent other manufacturers of bagging from obtaining that proportion of the bagging business which they would have obtained upon the basis of their relative costs and efficiencies in the absence of the method of respondents; and (*c*) to promote an unfair method of competition.

CONCLUSION.

Wherefore, it is respectfully submitted that the order of the Circuit Court of Appeals be set aside, and that the order of the Federal Trade Commission be affirmed.

ALEX. C. KING,
Solicitor General.
HUSTON THOMPSON,
Federal Trade Commissioner.
CLAUDE R. PORTER,
Chief Counsel of the Federal Trade Commission.

APPENDIX.

Findings of Fact and Conclusions of Law by Commission.

FINDINGS OF FACT.

Paragraph 1.—That Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, one of the respondents, is a copartnership whose principal office and place of business is in the City of St. Louis, State of Missouri; that P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, is a copartnership with its principal office and place of business in the city of Vicksburg, State of Mississippi; and that the other respondent, C. O. Elmer, has his principal office and place of business in the city of New Orleans, State of Louisiana; that all of said respondents are now, and were at all times hereinafter mentioned, engaged in commerce among the several States and Territories of the United States in the sale and distribution of steel ties, manufactured and used for the purpose of binding bales of cotton, and jute bagging, manufactured and used for the purpose of covering and wrapping bales of cotton; and that the respondents, P. P. Williams, W. H. Fitzhugh and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer were, and are general selling and distributing agents for the said Anderson Gratz and Benjamin Gratz,

copartners, doing business under the firm name and style of Warren, Jones & Gratz, in the sale and distribution of said articles of commerce; and that the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the general selling and distributing agents for the Carnegie Steel Company located at Pittsburgh, Pa., in the sale and distribution of steel ties manufactured and used for the purpose aforesaid; and that the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the general selling and distributing agents of the American Manufacturing Company, the principal office of which is in the city of Brooklyn, State of New York, for the sale and distribution throughout the States, commonly known as cotton States, of jute bagging manufact ıred and used for the purpose aforesaid; and that Mente & Company with offices in the cities of New York and New Orleans, and many other persons sell and distribute a material known as sugar bag cloth in interstate commerce throughout the cotton growing States of this country, which material is used for the purpose of wrapping bales of cotton; and that the Carolina Bagging Company, located at Henderson, N. C., manufactures, sells and distributes in interstate commerce, throughout the cotton growing States of this country, what is known as rewoven bagging, and that said material known as rewoven bagging is manufactured and sold by other corporations and copartnerships in interstate commerce.

Paragraph 2.—That within three years last past respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and

style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company; and C. O. Elmer, adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those dealers, jobbers, and merchants who wished to buy steel ties from the said Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, either through themselves or their general agents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company and C. O. Elmer, to also buy at the same time from said respondents a corresponding amount of American bagging manufactured by the American Manufacturing Company, of which manufacturing company the the said respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were the sole selling and distributing agents in all the territory west of the Mississippi River, where cotton is grown and where bagging and ties are sold for the purpose of covering and wrapping bales of cotton.

Paragraph 3.—That the said respondents, Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, were and are the sole selling and distributing agents of the Carnegie Steel Company of Pittsburgh, Pa., in the sale and distribution of its entire output of steel ties made and sold for the purpose of binding

bales of cotton; and that the Carnegie Steel Company manufactures and sells annually about 75[1] per cent of all the steel ties manufactured for such purpose in the United States; and that the Carnegie Steel Company sufficiently dominates the cotton tie situation in the United States to enable it to fix and control the price of such ties throughout the country; and that about 45 per cent of the jute bagging required to cover the cotton crop of the Southern States is annually manufactured by the American Manufacturing Company and about 20 per cent by the Ludlow Manufacturing Associates of Boston, Mass., and the remaining requirement for baling the cotton crop, viz, about 35 per cent is made up by the use of second-hand bagging and a material called sugar bag cloth. This cloth, as well as the second-hand or reweven bagging, is in considerable demand by cotton balers and is sold and distributed by dealers throughout the Southern States in active competition with the jute bagging manufactured by the American Manufacturing Company and sold and distributed by the said respondents.

Paragraph 4.—That a great many merchants, jobbers, and dealers in bagging and ties throughout the cotton-growing States were many times unable to procure ties from any other firm except Anderson Gratz and Benjamin Gratz, copartners, doing business under the firm name and style of Warren, Jones & Gratz, or their said agents, P. P. Williams, W. H. Fitzhugh, and Alexander Fitzhugh, copartners, doing business under the firm name and style of P. P. Williams & Company, and C. O. Elmer, and that the said respondents sold and distributed such a large proportion of the entire amount of such ties manufactured and sold in the entire cotton-

[1] See note, p. 2.

growing section of the country, that they, the said respondents, had what amounted to a monopoly of the cotton tie business of the country, controlling and distributing such a large proportion of the entire output of cotton ties that cotton growers found it impossible to bind the cotton grown and produced in the Southern States without applying to and purchasing from the said respondents and their agents almost the entire output of such ties manufactured by the Carnegie Steel Company. The dominating and controlling position occupied by said respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Company and, in many instances, said respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were oftentimes compelled to buy bagging manufactured by the American Manufacturing Company, from said respondents, in order to procure a sufficient supply of steel ties used for the purpose aforesaid.

CONCLUSIONS OF LAW.

That the methods of competition set forth in the foregoing Findings as to the Facts, in paragraphs 1, 2, 3 and 4, and each and all of them are, under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers and distributors of jute bagging, and against other dealers and distributors in the material known as sugar bag cloth, and against manufacturers, dealers, and distributors of the bag-

ging known as rewoven bagging and second-hand bagging, in violation of the provisions of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to Define its Powers and Duties, and For Other Purposes;" and that there is not sufficient proof submitted in the hearings to sustain the paragraph in the complaint charging a violation of Section 3 of an act of Congress known as the Clayton Act.

[SEAL.]

WILLIAM B. COLVER, *Chairman.*
JOHN FRANKLIN FORT,
VICTOR MURDOCK,
Commissioners.

THE FEDERAL TRADE COMMISSION ACT.

Section 5 of an act of Congress, approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes." (38 Stat., Chap. 311, p. 719.)

SEC. 5. That unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the

commission shall be of the opinion that the method of competition in question is prohibited by this act it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding

before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in anywise relieve or absolve

any person, partnership, or corporation from any liability under the antitrust acts.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

SIMILARITY OF FEDERAL TRADE COMMISSION ACT AND INTERSTATE COMMERCE ACT, AS SHOWN BY THE PROCEEDINGS IN CONGRESS.

Senator Newlands: Page 11082, Congressional Record, volume 51, part 11; page 11084, Congressional Record, volume 51, part 11; page 11086, Congressional Record, volume 51, part 11; page 11112, Congressional Record, volume 51, part 11; page 11235, Congressional Record, volume 51, part 11.

Senator Cummins: Page 11103, Congressional Record, volume 51, part 11; page 11104, Congressional Record, volume 51, part 11; page 11379, Congressional Record, volume 51, part 11; page 11451, Congressional Record, volume 51, part 12; page 12916, Congressional Record, volume 51, part 13; pages 13004–13006, Congressional Record, volume 51, part 13; page 13047, Congressional Record, volume 51, part 13; page 13050, Congressional Record, volume 51, part 13; page 13063, Congressional Record, volume 51, part 13.

Senator Hollis: Page 12142, Congressional Record, volume 51, part 12.

Senator Lewis: Page 12147, Congressional Record, volume 51, part 12; pages 12925–12926, Congressional Record, volume 51, part 13.

Senator Walsh: Page 13052, Congressional Record, volume 51, part 13.

Mr. Covington: Page 14928, Congressional Record, volume 51, part 15.

Mr. Stevens: Page 14938, Congressional Record, volume 51, part 15.

Report of Senate Committee on Interstate Commerce: Congressional Record, volume 51, part 11, pages 11087, 11089.

Report No. 533, House of Representatives, Committee on Interstate and Foreign Commerce: Congressional Record, volume 51, part 7, page 6714.

Congress intended to provide a broad rule covering all unfair competition and to confer on the Commission power to decide what came within the rule:

Senator Newlands: Page 11084, Congressional Record, volume 51, part 11; page 11090, Congressional Record, volume 51, part 11; page 11107–8, Congressional Record, volume 51, part 11; page 11112, Congressional Record, volume 51, part 11; page 11189, Congressional Record, volume 51, part 11; page 12221, Congressional Record, volume 51, part 12; page 12939, Congressional Record, volume 51, part 13; page 13048, Congressional Record, volume 51, part 13.

Senator Cummins: Page 11104, Congressional Record, volume 51, part 11; page 11388, Congressional Record, volume 51, part 11; page 12653, Congressional Record, volume 51, part 13; page 13006, Congressional Record, volume 51, part 13.

Senator Robinson: Page 11231, Congressional Record, volume 51, part 11.

Senator Hollis: Page 12146, Congressional Record, volume 51, part 12.

Senator White: Page 13108, Congressional Record, volume 51, part 13.

Report of Senate Committee on Interstate Commerce, page 11090, Congressional Record, volume 51, part 11.

Conference Report, pages 14768, 14769, Congressional Record, volume 51, part 15.

Conference Report, pages 14919, 14925, Congressional Record, volume 51, part 15.

The jurisdiction of the Circuit Court of Appeals was intended to be restricted exclusively to questions of *law:*

Senator Cummins: Page 11104, Congressional Record, Volume 51, Part 11; page 11451, Congressional Record, Volume 51, part 12; page 13004, Congressional Record, Volume 51, part 13; page 13007, Congressional Record, Volume 51, part 13; page 13045, Congressional Record, Volume 51, part 13; page 13050, Congressional Record, Volume 51, part 13; page 13063, Congressional Record, volume 51, part 13.

Senator Newlands: Pages 11182–3, Congressional Record, volume 51, part 11; page 12217, Congressional Record, volume 51, part 12.

Senator Kenyon: Page 13156, Congressional Record, volume 51, part 13.

Mr. Sims: Page 14940, Congressional Record, volume 51, part 15.

○

Supreme Court, U. S.
FILED
MAR 29 1920
JAMES D. MAHER,
CLERK.

Supreme Court of the United States

No. 492.

FEDERAL TRADE COMMISSION,
Petitioner,

against

ANDERSON GRATZ and BENJAMIN GRATZ, co-partners, doing business under the firm name and style of WARREN, JONES & GRATZ; P. P. WILLIAMS, W. H. FITZHUGH and ALEXANDER FITZHUGH, co-partners, doing business under the firm name and style of P. P. WILLIAMS & COMPANY and CHARLES O. ELMER,
Respondents.

RESPONDENTS BRIEF.

THOMAS F. MAGNER,
Attorney for Respondents,
32 Court Street,
Brooklyn, N. Y.

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Supreme Court of the United States

FEDERAL TRADE COMMISSION, Petitioner, against ANDERSON GRATZ and BENJAMIN GRATZ, co-partners, doing business under the firm name and style of WARREN, JONES & GRATZ; P. P. WILLIAMS, W. H. FITZHUGH and ALEXANDER FITZHUGH, co-partners, doing business under the firm name and style of P. P. WILLIAMS & COMPANY and CHARLES O. ELMER, Respondents.	No. 492.

BRIEF OF RESPONDENTS, WARREN, JONES & GRATZ AND P. P. WILLIAMS & CO.

By a writ of certiorari, issued out of this court on the petition of the Federal Trade Commission, the Commission seek to review an order of the

Circuit Court of Appeals, Second Circuit, which reversed and set aside an order of the Federal Trade Commission which forbade the respondents above named from selling cotton bagging and cotton ties together in proportionate quantities.

The respondents, Anderson Gratz and Benjamin Gratz, the surviving members of the firm of Warren, Jones & Gratz, are merchants, who for over forty years have been engaged in the selling of cotton bagging and cotton ties; the respondents, P. P. Williams & Company, are merchants engaged at Vicksburg, Mississippi, in merchandising, buying and selling over seventy different articles, including cotton bagging and cotton ties; the respondent, C. O. Elmer, is a broker, engaged in business at New Orleans.

Cotton bagging is the loose woven cloth used to cover cotton bales. The cloth is held about the cotton bales by ties made of hoop steel. Six yards of bagging and six ties are usually required to cover each bale. This is called a pattern. From time immemorial it has been the custom to sell ties and bagging together by the pattern, as one witness expressed it, "just like cups and saucers." Cotton bagging is made in the United States by American Manufacturing Company, whose principal place of business is at Brooklyn, New York; who manufacture about forty-five (45%) per cent. thereof; by the Ludlow Associates, of Boston, Mass., who manufacture about twenty (20%) per cent. thereof; the remaining thirty-five (35%) per cent. is made up by the use of second-hand bagging and a material called sugar bag cloth. The sugar bag cloth was originally used for covering the sugar crop brought to the United States from Cuba and

is put up by Young & Metzner and the Federal Sugar Company, both of New York. The remade or rewoven or second-hand bagging is put up by a number of smaller concerns, the principal of which is the Carolina Bagging Company, located at Henderson, N. C.

Cotton ties previous to 1915 were manufactured by the Carnegie Steel Company, the Pittsburg Steel Company and the Sharon Steel Company, located at Pittsburg, Pa., the Atlantic Steel Company, at Atlanta, Ga., and Connors-Weyman Company at Birmingham, Ala. In 1915 the Sharon Company ceased to manufacture cotton ties (fols. 774, 775). The other companies still continue to do so.

The respondents, Gratz, were the agents for American Manufacturing Company for selling their bagging west of the State of Alabama. They were also officers of American Manufacturing Company. They were agents for the Carnegie Steel Company for the selling of steel ties.

It had been the custom in the trade for many years for the firm of Warren, Jones & Gratz, representing the Carnegie Steel Company, before the opening of the market, which usually occurred in the latter part of June in each year, to allot to the Ludlow Associates, American Manufacturing Company, the Federal Sugar Company, and Young & Metzner, a sufficient amount of ties to go with the cotton bagging and sugar cloth which they were manufacturing for the current year. These concerns would then dispose of the bagging manufactured by them and the ties so allotted together, in quantities being the multiples of six yards of bagging and six ties. In the State of Texas, which is the largest cotton growing territory in the United

States, the railroads shipped car-lots of bagging and ties together in these assorted patterns at reduced rates. The freight would be less for covering 1,000 bales than for the covering for 500 bales (page 350). After the Ludlow Associates, the American Manufacturing Company, Young & Metzner and the Federal Sugar Company were provided for, the smaller concerns were taken care of. The rewoven or second-hand or remade bagging with pieced ties were used together and exclusively in the southeasterly portion of the cotton belt. None of the respondents dealt in these articles (pages 345, 346).

That this practice must have been satisfactory to the trade is shown from the fact that nowhere in this record is it disclosed that *any manufacturer of cotton bagging or any manufacturer of steel ties, who alone were competitors of the respondents, made any complaint about the conduct of the respondents in the manner in which they handled these articles for the trade.* Indeed, no serious complaint as to the conduct of the respondents was made to the Federal Trade Commission by any responsible person, and no complaint which would warrant the Trade Commission in making this investigation and subjecting these respondents to the annoyance and expense which it has entailed upon them.

Previous to 1916 it is conceded that no one had any cause for complaint because of the conduct in trade of these respondents. In 1916, by reason of the great war, cotton was in great demand for explosives as well as for clothing, and steel was likewise demanded for armament and shells. The steel manufacturers could get better prices for hoops

than they could for the ties from which the hoops were fabricated. In 1915 steel hoops were worth $5.65 a ton more than the ties, in 1916 $5.70, and in 1917 $9.77 more, and it cost $2.00 a ton to fabricate the ties from the hoops (fols. 783, 790). The importation of jute out of which the bagging was made almost ceased. There was then an apprehension that there would be a scarcity of both ties and bagging, in which event the cotton crop could not be marketed, which meant national misfortune. All of the steel manufacturers made less ties in 1916 than they did in 1915, and one, the Sharon Steel Company, ceased to make them altogether (fols. 774, 775). In 1917 the Carnegie Steel Company was the only steel company that made a greater percentage of ties than they had made in previous years, and they did this at the earnest solicitation of the respondent, Anderson Gratz (fols. 778, 779). Burlap made from the advanced 304% (while cotton bagging made from jute advanced but 45% (fols. 834, 835). Not only was material scarce and dearer but railroad facilities for transportation were poorer, and the anxiety to get ties and bagging and the apprehension lest they might not be had, was increased by speculators who sent scarehead circulars among the trade. One of the most industrious of these was M. M. Graves, a witness before the Commission, who had carried over from 1915, 158,000 bundles of new ties upon which he cleaned up a profit of about $100,000 before the market was opened by the respondents for the sale of ties in 1916 (pages 140, 141). To overcome the drawbacks that these conditions produced in the trade the respondent, Anderson Gratz, actuated by the highest and most patriotic motives

and disdaining to clean up a fortune which he might have done in the early part of 1916, before the market for the sale of cotton ties opened, let it be known that only those who bought bagging would be supplied with the ties that they had for sale, and at the same time urged upon all the steel makers the necessity for their making more ties in 1916 than they had in previous years (fols. 788, 795, 797). He even went so far as to ask Mr. Glenn, of the Atlantic Steel Company, and Mr. Connors, of the Connors-Weyman Steel Company, to supply some of Warren, Jones and Gratz's customers, who had theretofore been supplied by Carnegie Steel Company, with ties manufactured by the Atlantic Steel Company and the Connors-Weyman Steel Company (fols. 785, 786, 795, 797). Instead of monopolizing the market Warren, Jones & Gratz were steadying the market at the expense of their own trade, and to their pecuniary loss.

When the speculators in ties found out that they could not obtain ties without at the same time purchasing bagging their demand for ties ceased *and shortly after the market opened in June,* 1916, *the respondents sold any quantity of ties without bagging to all who desired to buy,* and sent telegrams and letters broadcast throughout the cotton territory notifying all dealers to that effect (fols. 849, 850, 851). They actually sold for the Carnegie Company more ties than Carnegie Company did or could make. Within the week after the market opened on June 26th, they were oversold. Up to July 31, they had sold 1,363,478 bundles (fol. 838), although the Carnegie Company in that year only manufactured 991,556 bundles. They made themselves liable as merchants for the loss of a

large sum of money if the persons to whom they had sold these ties insisted on the performance of their contracts (fol. 838). *But they stopped the panic for ties.* In accomplishing this result naturally they gave displeasure to some people but they were not that class for whom honest men would ordinarily express any sympathy.

Among these people was one, Saul H. Lowenberg of Natchez, Miss., who some years previously had defrauded Warren, Jones & Gratz out of payment for a quantity of bagging (fols. 844, 168, 169). In 1916 he had been refused ties by The Atlantic Steel Co., the Pittsburg Co., and Connors-Weyman Co. (fol. 156). The respondents, Williams & Co. and Elmer, were the only ones who would sell him ties (fols. 156, 158, 166). For obvious reasons he did not apply to the respondents Warren, Jones & Gratz. He had purchased a small quantity of bagging from the Ludlow Associates who had been furnished ties to go with their bagging by Carnegie Company, but who would not furnish him ties to go with it. He says that when making complaint to Mr. Wallace of the Ludlow Company, that he could not procure ties to go with their bagging, Mr. Wallace suggested that he make a complaint to the Federal Trade Commission about conditions in the tie trade. Mr. Wallace was not examined as a witness. His company was furnished by respondents with ties sufficient for all the bagging they manufactured. In January, 1917, Lowenberg did make his complaint, not against the steel companies that had denied him ties, but against the agents of the Carnegie Co. who had befriended him on an *"impression"* that

Warren, Jones & Gratz were responsible for the conditions existing (fol. 179). No doubt he was actuated by that malice which one who injures another always harbors for his victim. The Federal Trade Commission thereupon started an investigation by a circular letter as well as by personal agents throughout the cotton states, and on the 17th day of June, 1917, caused to be served upon the respondents a complaint in which the respondents were charged with violating Sec. 5 of the Act of Congress approved September 26, 1914, known as the Federal Trade Commission Act, and also with violating Section 4, of the Act of Congress approved October 15th, 1914, known as the Clayton Act.

The first count of the complaint charges by paragraph 3

> *"that with the purpose, intent and effect of "stifling competition in interstate commerce* "in the sale of such bagging, all the respond- "ents do now refuse, and for more than a year "last past have refused to sell any of such "ties unless the prospective purchaser thereof "would also buy from them bagging to be used "with the number of ties proposed to be "bought; that is to say, for each six of such "ties proposed to be bought from the respond- "ents the prospective purchaser is required to "buy six yards of such bagging."

The second count in the complaint charges respondents with violating the provisions of the Clayton Act as follows:

"That all of the said respondents for more "than a year last past in the course of inter- "state commerce in violation of Sec. 3 of the "Act of Congress, have sold and made con- "tracts for sale, and are now selling and mak- "ing contracts for sale, of large quantities of "such ties and such jute bagging for use, con- "sumption, and resale within the United "States, and *have fixed, and are now fixing the "price charged therefor or the discount from "or rebate upon such prices on the condition, "agreement, or understanding, that the pur- "chasers thereof shall not use or deal in the "goods, wares, merchandise or other commod- "ities of a competitor or competitors of re- "spondents,* and that the *effect of such sales* "and contracts for sales, or such conditions, "agreements, or understandings may be and *is "to substantially lessen competition or tend "to create a monopoly* in such cotton jute bag- "ging industry."

This last charge was absolutely baseless and was known to be so by the Commission from the beginning.

The Federal Trade Commission named an examiner and a lawyer associate and sent them abroad in the land investigating the charges set up in the complaint. They took testimony at Jackson, Miss., Vicksburg, Miss., New Orleans, La., Pittsburg, Pa., Norfolk, Va., New York City, N. Y., and St. Louis Mo. They examined twenty-one witnesses and subpoenaed many more, some of whom they did not examine as their testimony would help these respondents (fol. 193). THEY

DID NOT PRODUCE A SINGLE WITNESS NOR A SCINTILLA OF EVIDENCE TO SUBSTANTIATE THE CHARGE MADE IN THE SECOND COUNT OF THE COMPLAINT, TO WIT: THAT THE RESPONDENTS HAD VIOLATED ANY OF THE PROVISIONS OF THE CLAYTON ACT, or had made contracts with relating clauses. They did not produce a single witness whose testimony tended in the slightest degree to prove the allegation in the first count of the complaint that *"with the intent and effect of discouraging and stifling competition,"* the *respondents had refused to sell any person ties unless they would at the same time buy from them cotton bagging.* And they did not produce a single witness who had not obtained from respondents during the times alleged in the complaint sufficient ties to go with all the bagging that they had purchased, whether they had purchased their bagging from the respondents or their competitors and they suppressed proof that had been furnished them establishing worthy motives to the respondents. Notwithstanding this proof the examiner appointed to take the testimony made findings, which the Commission approved in the same identical words, and made an order thereupon directing the respondents to desist from doing what had been the custom in the trade from the time when the memory of the man runneth not to the contrary, and what all other merchants and manufacturers in the country engaged in the same line of business are to-day doing namely of selling cotton ties and cotton bagging together in proportionate quantities.

The respondents duly petitioned the United States Circuit Court of Appeals in the Second Circuit for the reversal of this order and that Hon-

orable Court after due deliberation had thereon duly made and entered its order reversing and setting aside the order of the Federal Trade Commission and in their opinion state as follows:

> "And we discover no evidence to support the finding in Paragraph 2 that the respondents adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished also to buy from them unless such merchants and dealers would also buy from them a quantity of jute bagging. It is the natural and prevailing custom in the trade to sell ties and bagging together just as one witness testified it is to sell cups and saucers together. *Such evidence as there is of a refusal to sell is a refusal to sell at all to certain persons with whom the respondents had previous unsatisfactory relations and a refusal ao sell ties without bagging at the opening of the market in* 1916 *and* 1917, *when there was fear that owing to the scarcity of ties and the prospect of large crops the marketing of the cotton crop might be endangered by speculators creating a corner in ties.* The evidence is that with those exceptions the respondents sold ties without any restrictions to all who wanted to buy *and indeed made extraordinary efforts to induce the manufacturers of ties to increase their output so that all legitimate dealers and all cotton raisers should get enough ties and bagging at reasonable rates to market their cotton.* It is only in these exceptional and individual cases, which establish no general practice affecting the public, that can sustain the findings in paragraph 4.

> As we think there was no evidence to support any general practice of the respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of American Manufacturing Co's bagging *and that the Commission had no jurisdiction to determine the wants of specific individual grievances the order is reversed.*"

It is from this order of the United States Circuit Court of Appeals that the Federal Trade Board appeals.

The respondents respectfully submit to this Court that the order of the United States Circuit Court of Appeals should be affirmed and submit in support the following

Argument.

As to the Order of the Trade Commission:

POINT I.

The order of the Trade Commission is in violation of the constitutional rights of the respondents (A) In that the said order deprived these respondents of their liberties and property without due process of law. (B) In that the order of the Trade Commission is in violation of the equal rights of the respondents before the law.

As to the Act of Congress creating the Federal Trade Commission:

POINT II.

The words "unfair methods of competition in commerce are hereby declared to be unlawful," as used in Section 5 of the Federal Trade Act, approved Sept. 26, 1914, have not changed or added to the substantive law, and the Trade Board has no jurisdiction over these respondents.

POINT III.

Section 5 of the Act of Congress approved Sept. 26, 1914, known as the Federal Trade Act is unconstitutional in that it purports to confer upon the Trade Commission judicial powers.

POINT IV.

Section 5 of the Act of Congress approved Sept. 26, 1914, is unconstitutional in that it purports to delegate to the Federal Trade Commission legislative powers.

As to the Findings of Fact:

POINT V.

There is no evidence to support the material findings as to the facts as found by the commission even assuming that it has jurisdiction.

POINT VI.

The commission has made no finding of fact that justifies in law the order of the commission directing respondents to desist from selling together in proportionate quantities ties and bagging even assuming the findings to be supported by the evidence and the Trade Commission to have jurisdiction.

As to the Investigation:

POINT VII.

Gross errors were committed by the examiner for the commission in the taking of testimony to the prejudice of the respondents.

POINT VIII.

The methods of investigation pursued by the commission in this case were unfair and disclose either personal prejudice against these respondents or a political propaganda.

POINT I-A.

The order of the Federal Trade Commission deprives these respondents of their liberty and property without due process of law.

The order of the Commission is

> "that Warren, Jones & Gratz, P. P. Williams "& Co. and C. O. Elmer, cease and desist "from requiring purchasers of cotton ties, to "also buy or agree to buy a proportionate "amount of American Manufacturing Com- "pany's cotton bagging, and further that *the "respondents cease and desist from refusing "to sell cotton ties unless the purchasers buy "or agree to buy from them corresponding "amounts of American Manufacturing Com- "pany's bagging, or any amount of cotton bag- "ging of any kind"* (fol. 53).

This court has held that:

> "In the absence of any purpose to create or "maintain a monopoly the Act (Sherman Law) "does not restrict the long recognized right of "trader or manufacturer engaged in an en- "tirely private business freely to exercise his "own independent discretion as to parties with "whom he will deal, and he may announce in "advance the circumstances under which he "will refuse to sell" (United States vs. Colgate "Co., 250 U. S., 300, 307).
>
> "The right to pursue any legitimate trade calling or profession subject only to such rea-

> sonable regulation in the interest of the public welfare as may be imposed on all persons under like conditions cannot be arbitrarily taken from them any more than their real or personal property can be taken from them" (Toppin vs. Dist. of Columbia, 22 App., D. C., 68.

The order of the Commission forbids these respondents from insisting on their right to sell their own property consisting of cotton ties and cotton bagging together. It is not pretended by the Commission that this order is made *in the interest of the public.* Nowhere is the evidence or the findings is it claimed that the trade methods of the respondents have caused any *injury to the public,* or an advance in the price of either of these commodities—quite the reverse for it appears that it has resulted in a lowering of the price (fols. 805, 833), and to that extent an advantage to the public—nowhere is it contended in the evidence or the findings that the respondents cornered the market, or lessened the production of either of these commodities but on the contrary it appears that they increased production and suffered a loss in so doing (fols. 777, 778-785, 786, 795, 805). Nowhere does it appear that they prevented their competitors from obtaining their fair share of the commodities they manufactured and marketed, but on the contrary it appears that they urged their competing tie makers to make more ties (fols. 785, 786), and they furnished their competing bagging makers with all the ties they required or demanded (pages 345, 346). *There is no evidence of and no finding to the effect that the respondents by selling ties and bagging together stifled competi-*

tion or created a monopoly or committed any other unlawful act. And it appears from the testimony of every witness who was examined not only that every other dealer and manufacturer of bagging sells his ties and bagging together "just like cups and saucers" but that the business cannot be economically conducted in any other way. An order to the manufacturers of locks to desist from selling locks and keys together would be as reasonable as this order to desist from selling cotton ties and cotton bagging together.

"That no general power resides in the Legis-
"lature to regulate private business, prescribe
"the conditions under which it shall be con-
"ducted, fix the price of commodities or serv-
"ices, or interfere with the freedom of con-
"tract we cannot doubt. *The merchant and*
"manufacturer, the artisan and the laborer
"under our system of government are left to
"pursue and provide for their own interests
"in their own way untrammelled by burden-
"some and restrictive regulations which how-
"ever common in rude and irregular times are
"inconsistent with constitutional liberty"
(People vs. Budd, 117 N. Y., 1-15).

"Indeed we may go a step farther and say
"that as property can only be legally acquired
"as between living persons by contract, a gen-
"eral prohibition against entering into con-
"tracts with respect to property, or having
"as their object the acquisition of property
"would be equally invalid" (Holden vs. Hardy, 169 U. S., 366.

The case of People vs. Gilson, 109 N. Y., 398, was a prosecution of defendant for selling coffee and giving a present to each purchaser of a certain quantity of coffee purchased.

The court in this opinion declaring unconstitutional the law under which he was convicted of a crime for so doing; say in a learned opinion by Peckham, J.,

> "Liberty, in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment or restraint, but the *right of one to use his faculties in all lawful ways to live and work where he will, to earn his livelihood in any lawful calling and to pursue any lawful trade or avocation.* These principles are contained and stated in the above language in various cases, among which are Live Stock Association vs. Crescent City, etc., Co. (1 Abb. [U. S.], 388, 398); Slaughter House Cases (16 Wall., 36, 106); Matter of Jacobs (98 N. Y.), 98; Bertholf vs. O'Reilly (74 id., 509); People vs. Marx (99 id., 377).
>
> It is quite clear that some or all of these fundamental and valuable rights are invaded, weakened, limited or destroyed by the legislation under consideration. It is evidently of that kind which has been so frequent of late, a kind which is meant to protect some class in the community against the fair, free and full competition of some other class, the members of the former class thinking it impossible to hold their own against such competition, and therefore flying to the legislature to secure some enactment which shall operate favorably

to them or unfavorably to their competitors in the commercial, agricultural, manufacturing or producing fields. *By the provisions of this act a man owning articles of food which he wishes to sell or dispose of is limited in his powers of sale or disposition. A liberty to adopt or follow for a livelihood a lawful industrial pursuit, and in a manner not injurious to the community, is certainly infringed upon, limited, perhaps weakened or destroyed by such legislation.* It is certainly lawful to sell (as in this instance) coffee. It is an article of food and is now almost one of the necessaries of life to a large number of people. A person engaged as a retailer of coffee might very well think that he could greatly enlarge the amount of his trade by doing precisely what was done by the defendant in this case, and that *while his profits on the same amount of coffee sold would be smaller then if he* gave no present, yet by the growth of his trade his income by the end of the year would be more than by the old method. This statute, if valid, steps in to prevent his adopting such a course to procure trade, and from it to secure an income and livelihood for himself and family. *He is thus restrained in the free enjoyment of his faculties, which he ought to have the right and liberty to use in the way of creating or adopting plans for the increase and growth of his trade, business or occupation, unless such restraint is necessary for the common welfare. This law interferes with the free sale of food, for the condition is imposed that no one shall sell food and at the same time, and as part of the transaction, give away any other thing.* It is

not material if by reason of the prohibition the owner's sales of food are greatly cut down and his ability to support his family thereby perhaps largely decreased. If the law is valid, the fact of its existence is a complete answer to the complaints of the owner of food, that his liberty to sell his property and his chance to make a livelihood are very greatly impaired.

It cannot be truthfully maintained that this legislation does not seriously infringe upon the liberty of the owner or dealer in food products to pursue a lawful calling in a proper manner, or that it does not, to some extent at least, deprive a person of his property by curtailing his power of sale, *and unless this infringement and deprivation are reasonably necessary for the common welfare, or may be said to fairly tend in that direction or to that result, the legislation is invalid as plainly violative of the constitutional provision under discussion.*"

People vs. Gillson, 109 N. Y., 398, 399, 407.

In Matter of Jacobs (98 N. Y., 28), the Court of Appeals construing a law making in unlawful to manufacture cigars in tenement houses says:

"In Butcher's Union Company vs. Crescent City Co. (111 U. S., 746), Field, J., says: That among the inalienable rights as proclaimed in the Declaration of Independence 'is the right of men to pursue any lawful business or vocation in any manner not inconsistent with the equal rights of others, which may increase their property or develop their

faculties so as to give them their highest enjoyment. The common business and callings of life, the ordinary trades and pursuits which are innocent in themselves, and have been followed in all communities from time immemorial, must, therefore, be free in this country to all alike upon the same terms. *The right to pursue them without let or hindrance, except that which is applied to all persons of the same age, sex and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright.'* In the same case Bradley, J., says: 'I hold that the liberty of pursuit, the right to follow any of the ordinary callings of life, is one of the privileges of a citizen of the United States,' of which he cannot be deprived without invading his right to liberty within the meaning of the Constitution. In Live Stock, etc., Association vs. Crescent City, etc., Company (1 Abb. U. S., 388, 398), the learned presiding justice, says: *'There is no more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more nor less than the sacred right of labor'.* In Wynehamer vs. People, Johnson, J., says: 'that a law which should make it a crime for men either to live in, or rent or sell their houses,' would violate the constitutional guaranty of personal liberty. In Bertholf vs. O'Reilly (74 N. Y., 509, 515), Andrews, J., says: That one could 'be deprived of his liberty in a constitutional sense without putting his person in confinement,' *and that a man's right to liberty included 'the right to ex-*

ercise his faculties, and to follow a lawful avocation for the support of life.'"

Matter of Application of Jacobs, 98 N. Y., 98-107.

In the case of *Wright* vs. *Hart*, 182 N. Y., 330, the N. Y. Court of Appeals construing an Act of the Legislature making sales in bulk of merchandise fraudulent as to creditors says:

"In the case at bar we are concerned with no quibbles of verbiage or technicalities of construction, but with the broad question whether an act of our legislature is repugnant to the 'iron rule' of our Federal and State constitutions that no citizen shall be deprived of 'life, liberty or property,' or be denied 'the equal protection of the laws.'

In the course of judicial interpretation, the words, 'liberty' and 'property' as used in the constitutions, have naturally and properly been given their most comprehensive signification, so that they embrace every form and phase of individual right that is not necessarily taken away by some valid law for the general good. *'The term 'liberty,' as protected by the constitution, is not cramped into a mere freedom from physical restraint of the person of the citizen, as by incarceration, but it is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare'* (People vs. Marx, 99 N. Y., 377). 'All laws, therefore, which impair or trammel these

rights, which limit one in his choice of a trade or profession, or confine him to work or live in a specified locality, or exclude him from his own house, or restrain his otherwise lawful movements (except as such laws may be passed in the exercise by the legislature of the police power), are infringements upon his fundamental rights of liberty, which are under constitutional protection.' (In re Jacobs, 98 N. Y., 98). 'Liberty,' * * * includes the right to make and enforce contracts (State vs. Loomis, 115 Mo., 307; Allgeyer vs. Louisiana, 165 U. S., 578). *The right to use, buy and sell property is protected by the constitution, and 'when the law annihilates the value of property, and strips it of its attributes by which alone it is distinguished as property, the owner is deprived of it according to the plainest interpretation,* and certainly within the constitutional provision intended expressly to shield personal rights from the exercise of arbitrary power" (Wynehamer vs. People, 13 N. Y., 378, 398; People ex rel., Manh. S. Instn. vs. Otis, 90 N. Y., 48)."

Wright vs. Hart, 182 N. Y., 330-343.

"Freedom to contract was the essence of freedom from undue restraint on the right to contract."

White Ch. J. Standard Oil Co. vs. U. S., 221 U. S., 1-62.

A statute which prohibited persons engaged in mining and manufacturing from selling merchandise and supplies to their employees at a greater

percentage of profit than they sell to others not in their employ was held unconstitutional.

State vs. Fire Creek Coal Co., 30 W. Va, 188.

See, also,

Yick Wo vs. Hopkins, 118 U. S., 356;
Minnesota vs. Barber, 136 U. S., 313;
Allgeyer vs. Louisiana, 165 U. S., 578, 589, 590;
Powell vs. Pennsylvania, 127 U. S., 678, 684;
Butchers' Union vs. Crescent City, 111 U. S., 746-762;
Lochner vs. New York, 198 U. S., 45, 53;
Forster vs. Scott, 136 N. Y., 577-584;

In construing the statute the court should consider not alone what the Trade Commission *has ordered in the case at bar but what they might order* in any case where in their fallable judgment the merchant or manufacturer has been employing "unfair" methods of competition. A perusal of the reports of the commission will disclose many vicious cases of meddling with the business affairs of our merchants and manufacturers, e. g., inquiring into and restraining their salesmen from entertaining their customers. But even the meddling there disclosed will not reveal the full possibilities of the injury to business that may be done by energetic or dishonest busybodies and political opponents under the provisions of this Act.

"We are, however, of the opinion that there is another and broader ground upon which this statute should be declared invalid. *In discussing the constitutionality of this act, it is to be remembered that the question is to be determined not by what has been done under it in any particular instance, but by what may be done under and by virtue of its authority.* (Stuart vs. Palmer, 74 N. Y., 183; Gilman vs. Tucker, 128 N. Y., 190, 200.) When considered with that idea in view, it at once becomes obvious that this statute may be employed to confiscate to the state the entire property of an individual for the commission of a trespass upon the property of another, however slight, and this, too, although the owner is guiltless of any intended or actual wrong."

Colon vs. Lisk, 153 N. Y., 188, 194.

POINT I-B.

The order of the Commission is in violation of the equal rights of the respondents before the law.

If we understand the theory upon which the Commission claim to exericse a control over the conduct in trade of the respondents, it is because the respondents Warren, Jones and Gratz, who are the selling and distributing agents of the American Manufacturing Company for the sale of cotton bagging in the cotton growing States, and who are also the sole selling and distributing agents of the

Carnegie Company for their cotton ties in the same territory, have adopted the policy of so distributing these two products that they sell the same together in proportionate quantities of each. And while the only motive ascribed in their findings of fact by the Commission to the respondents in so distributing their products is "to force those dealers buying steel ties from the respondents to also buy at the same time from the respondents a corresponding amount of *American* bagging," yet, that this motive did not influence the Commission in making their order, is shown from the fact that the order made by the Commission provides that the respondents may not, in accordance with the universal custom in the trade, sell ties and bagging together in proportionate quantities *regardless of who manufactured either the ties or the bagging.* This conclusion is strengthened by the reflection that the respondents, P. P. Williams & Company, who are general merchants selling over seventy different articles, embracing other ties than those of Carnegie Company's make, and other bagging than that of American Manufacturing Company's make, *may not sell together ties of any make with bagging of any make.*

The order of the Commission, therefore, is that all of these respondents must cease and desist from doing acts which are not unlawful, acts which every other trader or manufacturer in the country may do without let or hindrance and which every other manufacturer and trader in the country who deals in ties and bagging, has been doing from time immemorial, and which every witness examined by the Commission has testified is the only way in which the business can be successfully conducted.

Korndorfer testified he knew of no dealer who sells one without the other. "They go together like cups and saucers" (p. 62, fol. 127). W. M. Foster testified: "You can not sell ties without bagging" (p. 124, fol. 276, p. 130, fol. 291). "One without the other is no good" (p. 133, fol. 298). J. C. Werner: "That is the way the business is done" (p. 168, fol. 382). John I. Jenkins: "We think that you understand that we could do very little with bagging without ties" (p. 230, fol. 533), "without ties will not be able to sell bagging that is all" (p. 231, fol. 535). Benj. Margolius: "The trade would not buy one without the other" (p. 240, fol. 557). W. P. Gohlson says: "Did not sell bagging because I had no ties to match. Could not sell one without the other" (p. 217, fol. 501). The railroads recognizing the custom of the trade make special rates for combination shipments by the pattern (p. 350). The method was universal in the trade.

The order of the Commission would prevent these respondents from doing what every other free American citizen may freely do and deprives these respondents of their constitutional right to the equal protection of the law with their fellow citizens.

> "The equal protection of the law means equality of opportunity to all in like circumstances, and that classification to be valid must not be arbitrary and discriminate against persons without a basis of reason. These principles have become familiar from frequent statement in the decisions and need no citation nor discussion of the cases here. They

have become constituent elements in our popular form of government. The very nature of our free government forbids that a man should be compelled to refrain from acts which the law permits."

Hauser vs. North British Ins. Co. (206 N. Y., 453, 462).

"No duty rests more imperatively upon the Courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

Gulf, Colorado & St. P. R. R. vs. Ellis, 165 U. S., 150, 165.

Cotting vs. Kansas City Stock Yds., 183 U. S., 79.

"The equal protection of the law requires that the same methods and means be applied impartially to all the constituents of each class, so that the laws shall operate equally and uniformly upon all persons in similar circumstances."

Kentucky R. R. Tax Cases, 115 U. S., 321, 337.

Connolly vs. Union Pipe Co., 184 U. S., 540.

Yick vs. Hopkins, 118 U. S., 356.

People vs. Marx, 99 N. Y., 377-386.

Janesville vs. Carpenter, 77 Wis., 288, 301.

Powell vs. Pennsylvania, 127 U. S., 678.

Missouri vs. Lewis, 101 U. S., 22, 31.

POINT II.

The words in the Federal Trade Act "unfair methods of competition in commerce are hereby declared unlawful" have not changed or added to the substantive law.

In construing the Sherman Law in the Tobacco Case, Mr. Chief Justice White said:

> "The Act of Congress must have a *reasonable construction or else there would scarcely be an agreement or contract among business men that could not be said to have directly or remotely some bearing on interstate commerce and possibly to restrain it.*"
>
> United States vs. American Tobacco Co., 221 U. S., 106-179.

Section 5 of the Federal Trade Act says that "unfair methods of competition in commerce are hereby declared unlawful." The act does not say "all" unfair methods, nor does it define what acts constitute the "unfair" methods that are declared to be "unlawful." The word "unfair" and "unlawful" are both generic terms. The courts have construed their meaning variously according to the varying circumstances that have arisen in the multitudinous affairs of human intercourse. Certainly all competition is not unfair. Competition is said to be the life of trade, and methods of competition that are often very "unfair" to the individual and even to a class, and from his and their point of view extremely "unfair," may be for the advancement of the interests of the

public. If the public, then, are benefited by the methods of competition no matter how "unfair" these methods may be to the individual who suffers from them, such methods of competition are not "unlawful."

And the Congress may not by law prohibit these methods, for it would be a discrimination against the individual in the doing of a lawful act, and would be a denial to him of the equal protection of the law. To such cases the courts have applied the rule, *"damnum absque injuria."* Therefore, all competition is not unfair and all "unfair" competition is not "unlawful." If the public be unconcerned in the methods of competition and the methods of competition be so "unfair" as to trespass upon the rights of other persons, causing them individual injury, these acts usually called *torts* may be "unlawful" and courts of equity have restrained their continuance, and damages for their commission have been awarded by courts of law.

But inasmuch as the public are not interested in the repression of these unlawful acts, and as the Trade Commission is authorized to institute proceedings only when *"it would be to the interest* of the public" it cannot be that this class of "unfair" methods of competition in commerce, which though "unlawful," was meant by the Congress to be brought within the provisions of Section 5 of the Federal Trade Act. Therefore *this last class of practices which embrace methods of competition in commerce at once both "unfair" and "unlawful" does not come within the purview of the act*, and the terms employed in the act are not of universal application. There is but one other class of methods in commerce which are both "unfair" and "unlawful," to wit: methods which involve an injury to the

public—methods which restrain trade, stifle competition and create monopolies. These methods were already known to the law when the Federal Trade Law was enacted. They were contained in the Sherman Law and the several anti-trust laws, which were comprehensive enough to embrace all those "unfair" methods of competition which could under any and all circumstances be considered by the trade commission as "unlawful," and subject to its jurisdiction.

In United States vs. Keystone Watch Case Co., 218 Fed., 502-515-516, McPherson J., referring to the Sherman Law said:

> "The Act of 1890 is directed against, restraint of interstate or foreign trade. * * * Trade may be restrained in many ways and by many devices *but these are all covered* by the first and second sections of the act. In these sections two classes of prohibited acts are described: (1) the concerted action of two or more persons, which may take the form of a contract, a combination in whatever form, or a conspiracy; and (2) monopoly or the attempt to monopolize which may be the act of one person alone or more than one. *These two classes are intended to be all embracing, and thus far in the history of the statute no variety of device has escaped their sweep.*"

And if the Congress intended when it passed the Federal Trade Act to make acts and practices "unlawful" other than and in addition to those already known to the law as "unfair methods," constituting "unlawful" restraint of trade, surely Congress would have expressed and defined them.

This the Congress not only refrained from doing, but the very provisions of the act negative the presumption that they intended so to do.

Though the act by Section 4 gives numerous definitions of the terms used therein it is ominously silent as to what it meant by the words "unfair methods of competition" and if it intended to add to the substantive law by including within its nomenclature a new set of "unfair methods" not theretofore included, and which thereafter would be "unlawful," surely the Congress would have said so.

That the Congress had in mind the possibility of the meaning of the terms "unfair methods of competition" being misunderstood, and negatived the idea that it intended making new substantive law, is shown by Section 11, which provides, "nor shall anything contained in the act be construed to *alter, modify or repeal* the anti-trust Acts, or the Acts to regulate commerce or any part or parts thereof." The closest scrutiny of the Act will fail to show any terms in the whole act to which this provision contained in Section 11 could possibly apply other than to the words "unfair methods of competition in commerce are hereby declared unlawful" contained in Section 5 of the Act, and does not the employment of these terms "alter" "modify" "repeal" show an intention on the part of the Congress not to enlarge the scope of the unlawful acts?

And that the Congress intended by this provision to limit the application of the Act to the then existing law is further evidenced by this. The Federal Trade Commission Act was passed September 26th, 1914. On October 15th, 1914, the Congress passed what is known as the Clayton Act, entitled

"An Act to *supplement* existing laws against unlawful restraints and monopolies." The Clayton Act enumerates a variety of acts which constituted "unlawful methods of competition" and specifically gives jurisdiction to the Federal Trade Commission to investigate and enforce the law concerning them (Sec. 11). These "unlawful methods" embrace "discriminations in price between purchasers of commodities, *where the effect of such discrimination may be to substantially lessen competition or to create a monopoly in any line of commerce*" (Sec. 2); "to lease or make a sale or contract for goods, wares, merchandise, machinery, supplies or other commodities * * * or to fix a price therefor or discount therefrom or rebate upon such price or condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale or contract for sale may be substantially *to lessen competition or tend to create a monopoly in any line of commerce*" (Sec. 3); "no corporation engaged in commerce shall acquire the whole or any part of the stock or other share capital of another share corporation also engaged in commerce, where the effect of such acquisition may be to substantially *lessen competition or tend to create a monopoly*" (Sec. 7). These include all the methods of competition" thus set forth in the Clayton Act "unfair methods of competition in commerce"? And if the Federal Trade Commission Act was intended to embrace them, why was the Clayton Act passed to "*supplement*" it? That the Federal Trade Commission Act like the Clayton Act applied only to the suppression of practices

that tended to stifle competition and to create monopolies is evident, for investigations conducted by the Commission are limited to those cases "where a proceeding by it in respect thereof would be to *the interest of the public*" (Sec. 5, Federal Trade Act); and the public are only interested in those cases where their rights are apt to be injured.

In the judicial interpretation of law the opinions of the law-makers have no weight with the courts.

> United States vs. U. P. R. R., 92 U. S., 72, 79.

Congress, therefore, has not changed the substantive law by the passage of the Federal Trade Commission Act.

The inquisitory powers of the Federal Trade Commission, therefore, are confined entirely to the "unfair methods of competition in commerce" made "unlawful" by the Sherman Law, the Clayton Act and the several anti-trust laws, and do not embrace those multitudinous "unfair methods" which the courts take jurisdiction over, classified under the name of torts, and the Federal Trade Commission may not investigate nor make orders concerning them.

It was not the intention of the Congress to give to the Federal Trade Commission a roving commission to examine every merchant and manufacturer where salesmen give a box of cigars or a dinner to the customer's buyers, and order them to desist from so doing.

POINT III.

Section 5 of the act creating the Federal Trade Board is unconstitutional in that it purports to confer upon the board judicial powers.

The Trade Commission is not an administrative body like the Commerce Commission. Its functions are inquisitorial not judicial. The Congress may not confer judicial powers on a non-judicial body.

It was to prevent the creation of just such inquisitorial bodies as the Trade Commission that the inhibitions on the power of Congress were inserted in the Constitution.

> "In Magna Charta they were wrested from "the King as restraints upon the power of the "crown. With us they were imposed by the "people as restraints upon the power of the "Legislature."
>
> Wynehamer vs. People, 13 N. Y., 378-382.

The 3rd provision of the English Bill of Rights of 1689 was as follows:

> "3rd. That the commission for erecting the "late Court of Commissioners for ecclesiastical "causes and other commissions and courts of "like nature are illegal and pernicious."

Article III, Section 1 of the Federal Constitution provides that

"the judicial power of the United States shall "be vested in one Supreme Court, and in such "inferior courts as the Congress may from "time to time ordain and establish."

"Section 2. The judicial power shall extend "to all cases in law and equity arising under "the Constitution and the laws of the United "States * * * to controversies to which the "United States may be a party."

The judges of these courts are not appointed by the Congress nor subject to its will. Even the powers of the Federal Judges are restricted by the Seventh Amendment, which provides "In suits at common law where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved."

Section 5 of the act creating this commission is a usurpation by the Congress of the judicial power. It casts upon what concededly is not a judicial body functions that under the foregoing provisions of the Constitution belong exclusively to the courts. Section 5 of the act provides, among other things, for the following judicial acts: the service of a complaint, the receipt of an answer thereto, the service of subpoenas and the examination of witnesses; *the weighing of evidence;* the making of *findings of fact* and *conclusions of law;* and the service of an injunction order restraining the defendant

"if upon the hearing *the commission shall be* "*of the 'opinion' that the methods of competi-* "*tion in question is prohibited by this act.*"

The act further provides that

> "the findings of the commission as to the facts *"if supported by testimony shall be conclusive."*

In the case at bar, these commissioners never examined and never saw a single one of the witnesses who testified. They probably never even examined the record—For they found as one of the facts of the case exactly as was recommended by their examiner wherein his arithmetic was wrong, viz.: in his finding in paragraph three "that "Carnegie Steel Co. manufactures 75% of all the "steel ties manufactured for such purpose," whereas the only evidence in the case, and that produced by the examiner of the commission and his lawyer, viz.: the figures from the books of the steel companies show a much smaller percentage. Yet the commission is empowered to and does by their findings declare the respondents guilty of an unlawful act in violation of the provisions of the Federal Trade Act, and are empowered to, and do make an order depriving these respondents of their liberty to freely contract, and to enjoy the profits of these business. And these findings of fact *are "conclusive" on this court if "supported" by testimony."* If such be the law, neither this court nor the Circuit Court of Appeals may find that the Carnegie Steel Co. made but 59% of the *new* steel ties and 40 3/10% of *all* the steel ties made in the country in 1916, although the undisputed figures supplied by the commission's own witnesses show this to be so, because the commission has found as a *fact* that Carnegie Co. manufactured 75% of all the ties manufactured and *there is testimony to "support" that finding.*

In every jurisdiction where the question has been raised, it has been held that the weighing of evidence *is a judicial function* and that legislation further than making certain facts *prima facie* evidence is an invasion of the judicial power vested in the courts.

It has been held that the Legislature may not make tax deeds conclusive evidence of the title of the grantee or of the contents thereof.

Marx vs. Hawthorn, 30 Fed. R., 579, 585, 587.
Banon vs. Bearns, 39 Fed. R., 892-895-896.
Cooleys' Const. Lim., 6th Ed., 452-453.
Grosbeck vs. Seeley, 13 Mich., 329.

That the legislature may not prescribe what evidence is conclusive has been held in

White vs. Flynn, 30 Ind., 46.
Corbin vs. Hill, 21 Ind., 70.
Wantlan vs. White, 19 Ind., 470.
People vs. Lyon, 27 Hun, 180-182 (N. Y.).
Kelly vs. Herall, 10 Sawyer, (U. S.), 161, 169.
Jamesville vs. Carpenter, 77 Wis., 288-301.
King vs. Dedham Bank, 15 Mass., 447.
Chicago R. R. vs. Minnesota, 134 U. S., 413.
United States vs. Klein, 13 Wallace (U. S.), 128, 146, 147.
L. R. & F. R. R. vs. Payne, 33 Ark., 816.
Meyer vs. Berlandi, 39 Min., 438.
Felix vs. Wallace, 62 Kans., 667.

Making contents of bills of lading conclusive evidence of correctness of shipment held unconstitutional.

Missouri R. R. vs. Simonsen, 64 Kans., 802.

In reviewing the judgments of the State Courts on a writ of error this court has held that it may examine the entire record, including the evidence to determine what purports to be findings of fact:

"While it is true upon a Writ or Error to "a State Court we can not review the decision "upon pure questions of fact *but only on ques-* "*tions of law* it is equally true that we may "examine the entire record including the evi- "dence, if properly incorporated therein, to "determine what purports to be a finding upon "questions of fact is so involved with and de- "pendent upon such questions of law as to be in "substance and effect a decision of the latter."

Kansas City S. R. vs. Albers Co., 233 U. S., 573, 591.
Mackay vs. Dillon, 4 How., 421, 447.
Dower vs. Richards, 151 U. S., 658, 667.
Stanley vs. Schwalbey, 162 U. S., 255, 74, 77, 79.
Schlemmer vs. Buffalo, 205 U. S., 1.
Cedar Rapids Gas vs. Cedar Rapids, 233 U. S., 655, 669.
Graham vs. Gill, 223 U. S., 643.
Oregon R. R. Co. vs. Fairchild, 224 U. S., 510, 528.

In the case at bar the findings of fact in some instances are really conclusions of law, e. g., the finding as to "the purpose and effect" of the conduct of respondents; that the respondents "adopted and practised a policy"; that respondents "had what amounted to a monopoly of the cotton tie business" and finally that the methods of the respondents were "unfair methods of competition • • • in violation of Section 5 of the Federal Trade Act."

SECTION 5, DESTROYS THE RIGHT TO A TRIAL BY JURY.

May the members of this Commission without themselves seeing or examining a single witness make a finding of fact which declares these respondents guilty of an unlawful act and penalize them therefor and such finding of fact be *conclusive on all our Courts* and there be no judicial review of that finding even though a most cursory examination of the record discloses that such finding is erroneous. If so of what avail are those provisions of the constitution declaring that the judicial power in all cases in law and equity shall be vested in the Courts, and that all questions of fact in criminal causes, and in all suits at common law in which the amount exceeds in value twenty dollars shall be determined by a jury?

The provision in the constitution of the State of New York is not nearly so broad as the provisions of the Federal Constitution. It is "the trial by jury in all cases in which it has heretofore been used shall remain inviolate."

In a case arising out of a statute authorizing State game protectors to seize and condemn before

a magistrate without a jury a sloop engaged in destroying oysters, the N. Y. Court of Appeals held:

> "In considering this case, we deem any extended discussion of the question of the invalidity of the statute, because it deprived persons affected by it of the right to a trial by jury, unnecessary, in view of its exhaustive and satisfactory examination by the Court below. Section two of article one of the Constitution, which insures a trial by jury in all cases in which it has heretofore been used, was under consideration by this court in the case of Wynehamer vs. People (13 N. Y., 378, 426). It was there said that that provision does not limit the right to mere instances in which it has heretofore been used, but extends it to such new and like cases as may afterwards arise. That principle was also recognized in People ex rel. Comaford vs. Dutcher (83 N. Y., 240, 242). The doctrine that the jury trial referred to in that provision means a trial by a commonlaw jury of twelve men, was also asserted in the latter case, and Hill vs. People (20 N. Y., 363) and the Wynehamer case were referred to as sustaining it. Therefore, if the right to a trial by jury existed in similar cases at the time of the adoption of the Constitution, then clearly this statute was invalid, for the reason that it in no way provided for such a trial, either in the trial court or upon appeal. That the forfeiture of property used in violation of this statute is in effect a penalty we have no doubt. We regard it equally clear that suits to enforce forfeitures or penalties have

been generally tried by a jury. Consequently, as the statute under consideration makes no provision for such a trial, but provides another exclusive method, it is in conflict with the provisions of section two of article one of the Constitution of the State. Wood vs. City of Brooklyn, 14 Barb., 425, 432; Warren vs. People, 3 Parker, 544).

Colon vs. Lisk, 153 N. Y., 188, 193, 194).

"The term 'Common law' as used in the Con-
"stitution is in contradistinction to admiral-
"ty, maritime and equity jurisdiction and
"may in a just sense be sustained to *em-*
"brace all classes of litigation which are not
"of equity or admiralty jurisdiction whatever
"particular form they may assume to settle
"legal rights."

Parsons vs. Bedford, 3 Peters (U. S.) 433, 446.

It includes proceedings to enforce forfeitures and penalties.

The Sarah 8 Wheaton (U. S.) 391;
Graves vs. N. P. R. R., 5 Mont., 556.

If the courts provided for in the Constitution may determine questions of fact only in equity and admiralty jurisdiction, who will say that this purely investigating body, political in its complexion, may determine without review or appeal, questions of fact which make lawful acts unlawful, and impair the obligation of contracts, which even the sovereign states are inhibited from doing?

The Interstate Commerce Act and the Federal Trade Act are not analagous.

The Interstate Commerce Act placed under the supervision of a federal board the interstate public carriers—*and only in so far as their public service functions are concerned.* It is purely administrative measure exercised only over the administrative functions of public carriers which come within the administrative powers of the Congress. But in the manner in which the railroad choose, for instance, in disposing of their cast off equipment their personal property not used for the public service, will this court maintain that the Interstate Commerce Act has any application? The respondent's are selling their own personal property, they are selecting their own customers and their own way of disposing of it, *and they have done no injury to the public* in so doing. Counsel for petitioner confuses the interests of the individual with that of the public. The United States as *parens patriae* may not assume the guardianship of every individual who has a grievance and become his champion, as counsel suggests at page 27 of his brief in citing what Mr. Justice Pitney said in Hichman Coal Co. vs. Mitchel, 245 at page 259. In every case decided by the courts construing the provisions of the Interstate Commerce Act this court has clearly called attention to the administrative features of the act.

When the question of the weight of evidence and the power of the commerce board to make findings of fact was up for review. We quote from a number of the cases, all of which are cited by the learned counsel for the petitioners in his brief.

"But the statute gave the right to a full "hearing, and that conferred the privilege of "introducing testimony, *and at the same time "imposed the duty of deciding in accordance "with the facts proved.* A finding without "evidence is arbitrary and baseless, and if the "government's contention is correct, it would "mean that the commission had a power pos- "sessed by no other officer, administrative body "or tribunal under our government. It would "mean *that where rights depended upon facts, "the commission could disregard all rules of "evidence, and capriciously make findings by "administrative fiat.* Such authority, however "beneficially exercised in one case, could be "injuriously exerted in another; is inconsistent "with rational justice, and comes under the "Constitution's condemnation of all arbitrary "exercise of power."

Int. Comr. Comms. vs. L. & N. R. R., 227 U. S., 88, 91.
Int. Comr. Comms. vs. N. P. R. R., 216 U. S., 538, 544.
Manufacturers' Ry. Co. vs. United States, 246 U. S., 457, 482.

The findings of fact of the Interstate Commerce Commission are conclusive upon the Courts *only in so far as they are administrative.*

"It may be conceded that the evidence would "have warranted a different finding. Indeed "the first report of the Commission was to the "contrary. But to annul the commission's "order on that ground would be to substitute

"the judgment of the court for the judgment "of the commission, *upon a matter purely ad-* "*ministrative,* and this can not be done (cases cited)."

Manufacturers Ry. Co. vs. United States, 246 U. S., 457, 482.

The Interstate Commerce Commission having power to establish through routes and joint rates when no reasonable or satisfactory through rate exists, this court held, Harlan, J.:

"We are of the opinion that the Commission "had no power to make the order if a reason- "able and satisfactory route already existed, "and that "*the existence of such a route may* "*be inquired into by the Courts.*"

Interstate Comm. Com. vs. N. P. R. R., 216 U. S., 538, 544.

"Such orders *so far as they are administra-* "*tive* are conclusive. * * * They are quasi "judicial and are only prima facie correct in so "far as they determine the fact and amount of "damage."

Mitchel Coal Co. vs. Penn. R. R., 230 U. S., 247, 258.
Penn R. R. vs. Inter Coal Co., 230 U. S., 184, 196.

POINT IV.

Section 5 of the act is invalid also because it purports to confer upon the Trade Commission legislative powers.

Section 5 says "Unfair methods of competition in commerce are *hereby* declared *unlawful.*" What these unfair methods are is not defined. The commission is authorized to investigate whenever it has *"reason to believe"* that any person is using "unfair" methods of competition, and it shall *"appear"* to the commission that an investigation would be *"to the interest of the public."*

And if upon such hearing "the commission shall be of the *opinion* that the *method* of competition in question *is prohibited by this Act,"* that is, if in the opinion of the commission the methods of competition are *"unlawful."*

That is, the commission in its *discretion* may declare "unlawful" what was not so before, what may not be so thereafter, what may be so in Maine and not so in Georgia. It may declare as it has in this case at bar that what Warren Jones and Gratz are doing is unlawful but that it is lawful for all other merchants and manufacturers to do the same thing.

This is a delegation to the Trade Commission of the law making function which belongs only to the Congress, and which Congress may not delegate.

In Union Bridge Co. vs. United States (204 U. S., 364, 382), this Court in an opinion by Harlan, J., says:

"The true distinction as Judge Ranney, speaking for the Supreme Court of Ohio, has well said, 'is between the delegation of the power to *make* the law, which necessarily involves *a discretion as to what it shall be,* and conferring authority *or discretion as to its execution* to be exercised under and in pursurance of the law. *The first cannot be done;* to the latter no valid objection can be made Cincinnati, Willmington R. R. vs. R. R. Commission, 1 Ohio St., 77.)'

Union Bridge Co. vs. United States, 204 U. S., 364, 385.
Fields vs. Clark, 143 U. S., 649, 692.
Chinese Exclusion Cases, 130 U. S., 581, 609.

POINT V.

THE FINDINGS AS TO THE FACTS.

There is nothing in the findings as to the facts to justify the order of the Commission assuming that the Commission has jurisdiction.

The Commission has found as a Conclusion of Law: "That the *methods of competition set forth in the foregoing Findings as to the Facts* in Paragraphs 1, 2, 3 and 4 and each of them are under all the circumstances therein set forth *unfair methods of competition against other manufacturers, dealers and distributors of jute bagging;* and against other *dealers* and *distributors* in the

material known as sugar bag cloth; and against *dealers, manufacturers and distributors* of the bagging known as *rewoven* bagging and second-hand bagging in violation of the provisions of Section 5 of An Act of Congress, approved September 26, 1914, entitled 'An Act to Create a Federal Trade Commission, etc.' "

Assuming, but not conceding, that there is evidence to support the Findings as to the Facts made by the Commission, the closest scrutiny of the Findings as to the Facts will disclose no Findings of Fact that support this sweeping Conclusion of Law of the Commission. The following is a brief but complete recital of all the material Findings:

PARAGRAPH ONE: That the respondents are all engaged in interstate commerce in the sale and distribution of cotton ties, and for such purpose the respondents, P. P. Williams Company and Elmer, are general agents for respondents, Warren, Jones & Gratz, who are the general selling and distributing agents of Carnegie Company, *manufacturers* of cotton ties. That Warren, Jones & Gratz, are the general selling and distributing agents of American Manufacturing Company for the sale and distribution throughout the cotton States of jute bagging for covering cotton; that Mente & Company and many others *sell and distribute* a material known as sugar cloth used for wrapping cotton; that the Carolina Bagging Company *manufactures, sells and distributes* "what is known as rewoven bagging" (which, we will assume but which is not so found, is used for covering the cotton crop); that the "said material known as rewoven bagging *is manufactured and sold*" by

other "corporations and co-partnerships in interstate commerce."

PARAGRAPH TWO: "That within three years last past the respondents adopted and practiced the policy of refusing to sell ties to those *merchants and dealers* who wished to buy from them unless such *merchants and dealers* would also buy from them a corresponding amount of jute bagging. The purpose and effect of said policy was to force those *dealers, merchants and jobbers* who wished to buy steel ties from the respondents, to also buy at the same time from the respondents a corresponding amount of American Bagging *manufactured* by American Manufacturing Company of which company Warren, Jones & Gratz are the sole selling and distributing agents west of the Mississippi River."

PARAGRAPH THREE: That the Carnegie Company manufactures and sells annually about seventy-five (75%) percent of all the steel ties manufactured for binding bales of cotton in the United States, *and sufficiently "dominates" the cotton tie situation* in the United States to *"enable" it to fix and control the price of such ties* throughout the country. That forty-five (45%) percent of the jute bagging required to cover the cotton crop is *manufactured* by American Manufacturing Company; twenty (20%) percent by Ludlow Associates and thirty-five (35%) percent is made from second-hand bagging and sugar cloth.

PARAGRAPH FOUR: That a great many *merchants, jobbers and dealers* in bagging and ties

were *many times* unable to procure ties from any other persons than the respondents. That the respondents *sold such a large proportion* of the entire amount of such ties manufactured and sold that they had *what amounted to a monopoly* of the cotton tie business of the country, *controlling and distributing such a large portion of the entire output of cotton ties, that cotton growers found it impossible to bind the cotton produced without purchasing from the respondents almost the entire output of such cotton ties manufactured by the Carnegie Company,"* and "that the *dominating position* occupied by the respondents in the sale and distribution of cotton ties made it *possible* for them to force would, be purchasers of ties to also buy from them bagging manufactured by American Manufacturing Company, and in *many instances* respondents refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging and such purchasers were *oftentimes* compelled to buy bagging manufactured by American Manufacturing Company from the respondents in order to obtain a sufficient amount of cotton ties" (Finding Four, fols. 189-192).

We respectfully submit that under the worst possible aspect from which these findings are viewed there is nothing in them that warrants the Conclusion of Law made by the Commission that they set forth "unfair methods of competition against other *manufacturers, dealers and distributors* of jute bagging and against other *dealers and distributors* in the material known as sugar bag cloth, and against *manufacturers,* dealers and distributors of rewoven and second-hand bagging, in violation of the provisions of the Federal Trade Act."

It is true as found by the commission that the respondents "sold a large proportion of the entire amount of the cotton ties manufactured" and that "the cotton growers found it impossible to bind the cotton produced without purchasing from the respondents almost the entire output of such cotton ties manufactured by the Carnegie Co." It is also true what the commission *has not* found but what *the evidence discloses*—that Mr. Anderson Gratz urged the Carnegie Co. to produce more ties for the respondents to sell in 1916 and 1917, and that it was because of respondent's insistence that Carnegie Co. did produce 65% of all the new ties made in 1917 whereas the Carnegie Co. had produced but 56% thereof made in 1915. And it is also true that all the steel companies other than the Carnegie Co. made fewer ties in 1917 than in 1916, and fewer in 1916 than in 1915, which gave to the respondents that *"dominating position in the sale and distribution of cotton ties"* which the commission has found they possessed.

But

> *"magnitude of business does not alone con-*
> *"stitute a monoply nor effort at magnitude*
> *"an attempt to monopolize."*
>
> United States vs. Standard Oil Co., 173 Fed., 177, 195.

"A monopolizing by efficiency in producing and marketing a better and cheaper article than any one else is not within it" (i. e., Sherman Law).

> Patterson vs. United States, 222 Fed., 599, 619.

"We think it no more than reasonable to say "that when a large business has proved itself "to be beneficial and not harmful to the com- "munity, *it should not be condemned merely "because it is large.*"

United States vs. Keystone Watch Case Co., 218 Fed., 502-518.

Had the respondents limited their output or increased the price of cotton ties they would have been guilty of monopolizing the market.

United States vs. International Harvester Co., 214 Fed., 987-1005.

But the respondents did just the opposite, they increased their own output, urged their competitors to increase their production and lowered the price of ties to the consumer.

"The size of the business is not in itself a "violation of the law and should carry with it "no great weight. * * * The evil is not the "enlargement of the trade of one person but "the destruction of the trade of all others in "the same commodity."

United States vs. American Naval Stores, 172 Fed., 455-458;
Uuited States vs. U. S. Steel Corp., decided by this court March 1, 1920.

Apart from the utter variance between the evidence and the Findings of Fact made by the Commission the most significant observation regarding

them is: the "Facts" the Commission omits to find, and the Conclusion the Commission refuses to deduce.

For example: The Commission finds as facts that the only *competitors* of the American Manufacturing Company in the manufacture of bagging are the Ludlow Associates who manufacture twenty (20%) per cent. of the new bagging (the American Company manufactures forty-five (45%) per cent. of the new bagging); the Carolina Bagging Company, which manufactures rewoven or second-hand bagging; and that "rewoven bagging is manufactured and sold by other corporations and co-partnerships in interstate commerce." These unnamed manufacturers as far as the evidence in the case discloses are pure figments of the imagination. But whosoever they are, they, with the Carolina Bagging Company and the Ludlow Associates are the only *manufacturers* of bagging who are found by the Commission to be *competitors* of the American Company; and it must be to them that the Commission concludes as a matter of law that the methods of the respondents Warren, Jones & Gratz, as agents of the American Company, in distributing their bagging with ties in proportionate quantities, are "unfair methods of competition" under the terms of the Federal Trade Commssion Act.

Yet the Commission makes no finding that the respondents or either of them refused to sell or attached any condition to the sale of their cotton ties to the *manufacturers* of either new or rewoven cotton bagging; and they *omit to find* the very important fact essential to the proper determination of this inquiry, and which is shown by an abundance of uncontradicted credible evidence in

the case, *that the respondents did sell and deliver to each and singular the manufacturers of bagging for distribution with their cotton bagging all the cotton ties they required,* and enough to cover all they manufactured and at the same price paid by American Manufacturing Company. Evidence to this effect was supplied as to the Ludlow Associates and the Carolina Bagging Company, named in the Commission's Findings, as well as to the Federal Sugar Company, and to Young & Metzner, who supplied the sugar bag cloth to Mente & Co. manufacturers of sugar cloth bagging who are not therein named (fols 800, 801 pages 345, 346, 421, 422).

Nor does the commission make any finding as to the fact which the uncontradicted evidence discloses that both the Ludlow Associates and the Carolina Company, as well as Young & Metzner and the Federal Sugar Company, practice the selfsame method of distributing their bagging and ties together as is practiced by these respondents as agents of American Manufacturing Company.

Nor does the commission make any finding that this custom has prevailed in the trade for many years, as being testified by every single witness examined, and that several of the witness testified that "the business could not be conducted in any other way" W. M. Foster (fols. 276,291, 298), W. P. P. Goldson (Secty. of Carolina Co. (fol. 501), J. C. Werner, of Mente & Co. (fol. 382), John J. Jenkins (fols. 533, 535), Benj. Margolina, fol. 557).

The commission also finds that the same policy was adopted and practiced with "merchants, dealers and jobbers" and that the "*purpose* and effect of said policy was to force those merchants, deal-

ers and jobbers who wished to buy steel ties to also buy at the same time from the respondents a corresponding amount of bagging manufactured by American Manufacturing Company" (Paragraph Two, Findings as to Facts), and "the dominating and controlling position occupied by the respondents in the sale and distribution of ties made it possible for them to force would-be purchasers of ties to also buy bagging manufactured by American Manufacturing Company," and in *many instances* said respondents refused to sell ties unless the purchaser would also buy a corresponding amount of bagging and such *purchasers were oftentimes compelled* to buy bagging manufactured by American Manufacturing Company (Paragraph Four, Findings).

The foregoing Findings are singularly barren of any facts showing the commission of any unlawful act on the part of the respondents. And this court will not presume that the respondents have committed an unlawful act where an innocent construction may be placed on their conduct.

Assuming, but not conceding, the truth of the finding that the "*purpose*" of the respondents was to compel *merchants, dealers and jobbers* to buy American Bagging with the ties they offered for sale; and that in "*many instances*" they refused to sell ties without bagging; and that "such merchants and jobbers were '*oftentimes*' compelled to buy American Bagging in order to procure ties," who will say that this constituted an unlawful act? Non constat—, *in the absence of a contrary finding, the purpose and the conduct of the respondents in that respect may have been both legal and praiseworthy.* Who were the "merchant dealers and

jobbers" whom the respondents refused to sell the ties without the bagging? Why did they desire to purchase one without the other? Did they desire to corner the market in ties? Why did the respondents, who furnished all the *manufacturers* with all the ties they required to go with their bagging, refuse to sell these alleged "dealers and jobbers" ties without bagging? *If they had bagging and no ties why did they not procure their ties from the manufacturer of the bagging who had been supplied with sufficient ties to go with their bagging*? Did these jobbers get ties from the manufacturers when they bought their bagging and sell their ties to a speculator at an advanced price, and then come back for more ties, as did Boren & Stewart, whose manager Chas. M. Platter was one of the principal witnesses for the commission (fols. 212, 216, 217)?

How are the "public's interest promoted" by such solicitude for these unnamed "jobbers and dealers"? They were not *competitors* of the respondents, for the respondents are manufacturers' agents and "competition in interstate commerce could not be stifled or a monopoly created" by any conduct of the relators towards them.

The commission has made no finding that the relators' conduct in trade lessened or stifled competition or tended to create a monopoly in interstate commerce, and in their conclusion of law exculpate the respondents from that charge.

Then what unlawful act were they guilty of?

If as the Commission has found "that a great many merchants, jobbers and dealers in bagging and ties were many times unable to procure ties

from any other persons than the respondents," and "that the respondents controlled and *distributed* such a *large portion of the entire output* of cotton ties that cotton growers found it *impossible to bind the cotton* grown and produced in the United States *without* applying to and *purchasing* from the respondents and their agents *almost the entire output of such ties manufactured by the Carnegie Company*" (Paragraph Four, Findings as to Facts), does it not follow as a corollary that it was the duty of the respondents, who were distributors of bagging as well as distributors of ties, to so distribute the cotton ties that they would go with the cotton bagging, and so distribute the cotton bagging that it would go with the cotton ties, to the end that the consumer of both commodities would not only get the benefit of the cheapest method of transportation and handling, but that he would be certain to get the proper proportion of both commdities and *it would not be in the power of any "dealer or jobber" to buy up an undue quantity of either commodity and thereby greatly advance the price thereof to the consumer.*

This is exactly what was done by the "dealers and jobbers" whom the Commission used as witnesses. The witness, Chas. M. Platter was the employee of Boren & Stewart. The respondents sold them ties in quantities more than sufficient to go with their bagging. They sold these ties without bagging at a profit to M. M. Graves, of Graves & Company, who on a short market created by himself and several other "dealers and jobbers" turned over a profit of $100,000 on ties so cornered and stood to make profits twice as large if the respondents had not refused to sell him and these other

speculative jobbers ties without a proportionate amount of bagging.

The Commission fails to make any finding showing how or in what manner the method of doing business was in any manner "unfair" to either these *manufacturers* or that these *manufacturers* were in any manner injured by it or complained to the Commission about it. Nor is there any proof in the case that they were or did. On the contrary the proof is that these manufacturers procured all the ties they required to bind all the bagging they manufactured and they obtained most of it from these respondents as agents of the Carnegie Company after their former principals had failed or refused to supply them.

There is no finding and no proof that in the methods of business of respondents there was any discrimination in price or terms compelled by the respondents in favor of the purchasers of American Bagging or that any place in the country received prices or terms different from any other section.

There is no finding or proof in the case that the respondents in their conduct were prompted by the desire to or that their conduct did tend to stifle competition or to create a monopoly.

There is so finding that the public or that any person was injured unlawfully by respondent's methods of business.

Assuming, therefore, the authority in a proper case of the Commission to make a restraining order it has not in the case at bar made any findings to warrant the issuance of the order entered.

POINT VI.

There is absolutely no evidence to support the following Findings of Fact.

1. That the respondents, Warren, Jones & Gratz, are the general selling and distributing agents of American Manufacturing Company for the sale and distribution throughout *the States commonly known as the Cotton States of jute bagging* (Paragraph One). All the evidence in the case being to the effect as is found in Paragraph Two of the Findings that they "were the sole selling and distributing agents in all the territory *west of the Mississippi River* where cotton is grown."

2. That the Carnegie Company manufactures about seventy-five (75%) per cent. of all the steel ties manufactured in the United States.

The only evidence in the case as to the number of *"new"* ties manufactured was that supplied by the Commission and consisted of the sworn testimony of the officers of the several manufacturer's corporations as shown by the books of their companies, as follows, in bundles:

	1915	1916	1917	
Carnegie	1,308,624—59%	991,556—59%	1,170,887—65%	fol. 574
Pittsburg	249,985	183,764	210,585	" 585
Atlantic	437,338	368,990	334,212	" 212
Conners, Weyman	203,920	115,165	72,608	" 461
	2,199,867	1,659,475	1,788,292	

There can be no difference of opinion as to these figures for they were furnished by the Commission and they are the only figures on the subject in the

case. Previous to 1915 the Sharon Steel Company manufactured about 400,000 bundles of ties annually (fols. 774, 775). Had they continued to manufacture the same number in each of the succeeding years the Carnegie output would have been but 43% of the total number of *"new"* ties manufactured. But in addition to these *"new"* ties there were manufactured many hundreds of thousands of *rebundled and pieced* ties used to cover the rewoven bagging. Mr. Claude Hutchinson, the largest manufacturer or rebundled and pieced ties estimated that there were 800,000 bundles of these second-hand ties manufactured and used to cover the cotton crop in each of the years 1916 and 1917. (fol. 745). Assuming his estimate to be correct, and *it is only evidence in the case as to the number so manufactured,* the Carnegie Company made no more than 40 3/10% of *"all the ties manufactured"* in 1916 and no more than 40 5/10% of *"all the ties manufactured"* in 1917. These figures and in this testimony were called to the attention of the learned Examiner who made that "finding of fact" which the Commission confirmed as well as to the Commission themselves, and we are constrained to believe therefrom that the Commission gave scant attention to the evidence in the case and to the respondents' brief when they adopted this Finding of the examiner that the Carnegie Company manufactured 75 % of *"all the ties manufactured in the United States."*

It was necessary, of course, that there should be some exaggerated finding of fact to support the conclusion the Commission deduces therefrom "that the respondents sold and distributed such a large proportion of the entire amount of the cotton ties manufactured and sold, that they had what

"amounted" to a monopoly of the cotton tie business of the country," which becomes mere rhetoric in view of the actual fact that they manufactured but 40 % as is shown by all the evidence in the case. But as the motives which actuated the Carnegie Company to make more ties when their competitors were decreasing their output was both lawful and praiseworthy, this finding is not harmful.

The learned counsel for the petitioners in a foot note on page 2 of his brief, states that:

> "By an inadvertent typographical error the findings as to the facts made by the commission stated the amount of steel ties manufactured by the Carnegie Co., to be 75% of all those used in the cotton balling business of in the United States."

He admits the error and now claims that the product of the Carnegie Co., amounted to 59% in 1916 and 65% in 1917. We first call attention to the fact that even now the full extent of the error is not admitted and corrected by the counsel for the petitioners. The Carnegie Co. only produced that percentage of the *new* ties used, and the undisputed evidence is that the Carnegie Co. produced but 40% of *all* the ties used. We further say that we would be much pleased to believe that so important a branch of the Federal administration as the Trade Commission was unwittingly lead into the statement of an erroneous fact in their solemn findings as to the facts but we are compelled by the force of uncontradictable facts to assert the contrary. On page 19, folio 36, in the proposed findings 4 of the examiner, submitted with the testimony to

the Trade Commission will be found the following: "and that the Carnegie Steel Company manufactures and sells annually *75% of all the steel ties made in the United States for the purpose of baling cotton.*" This error was not only called to the attention of the Trade Board on the argument of the case before that body but the same table of figures which is hereinbefore printed in this brief showing the output of the several steel companies was printed and may be found on page 2 of the brief submitted by the counsel for these respondents to the Federal Trade Board in the argument there. And if the findings of the Trade Board are subject to review and correction by their own counsel, may not this Court have the same privilege? We think that further comment on this subject is unnecessary.

3. That purchasers of ties "were oftentimes compelled to buy bagging manufactured by the American Manufacturing Company from the respondents in order to procure a sufficient supply of steel ties *used for the purpose aforesaid*" (Paragraph Four, Findings).

What the Commission understands by the phrase "used for the purpose aforesaid" is not clear as it is not disclosed by the context. But assuming that they mean that the respondents oftentimes compelled purchasers who only wanted to buy ties to buy American bagging as a condition of getting ties, and that *"oftentimes"* purchasers did so buy bagging and ties when they only wanted ties, then we say there is no evidence in the case to support this Finding. Either as agents of the Carnegie Company or as agents of American Manufacturing Company it was the lawful privilege of the respon-

dents to refuse to sell either ties or bagging except in proportionate quantities of both, *provided their conduct in that regard did not tend to create a monopoly or to stifle competition.* Nevertheless, without respect to their rights, they contend that *there is nowhere in this record any evidence that any person was compelled by these respondents at any time to purchase and did purchase American bagging as a condition for obtaining any quantity of ties.*

The only witness who comes anywhere near to giving such evidence is G. O. Korndorfer, the manager for Rumbel-Wenzel Company; but an examination of his whole story proves directly to the contrary and shows that the respondents, P. P. Williams & Company, were the only persons in the country from whom he could or did get ties in 1916. Rumble & Wenzel Company handle about 700,000 yards of bagging and 10,000 to 15,000 bundles of ties annually (page 101). In the course of his examination it developed that *he purchased all of these* 15,000 *bundles of ties from the respondents in* 1916; that in 1916 he handled 500,000 yards of bagging only 100,000 yards of which he bought from respondents; that he used to get ties bought the Pittsburgh Steel Company, but had been unable to get ties from them during the last several years (page 102); that one time he handled ties for the Atlantic Steel Company, but in recent years they refused to quote him; that Connors-Weyman Company also refused to quote prices on steel ties to Korndorffer or his principals for the last couple of years; that he and his principals have been unable to get quotations from any manufacturer of steel ties other than the respondents (fol. 119).

He is asked on his direct examination.

"Q. With whom did you negotiate in this effort to secure ties in the Fall of 1916?

"A. With pretty nearly—I should say, every ties concern in this country. It was utterly impossible. We could not get any ties in any manner, shape or form *without buying American bagging.*

"Q. Through whom did you finally buy these ties?

"A. From P. P. Williams & Company of Vicksburgh. The first order was for 5,000 bundles of ties, this to go with 100,000 yards of bagging (fol. 107).

"Q. At that time state whether you were already supplied with bagging?

"A. We were, with Ludlow bagging, manufactured in Boston, Mass. We had 300,000 yards of Ludlow bagging at that time. It was not all we needed for the season. We bought more afterwards. We carried over 50,000 yards of the American bagging that we bought from Williams" (page 54, fols. 108, 109).

This is the sole testimony in the case produced by the Commission to support the several allegations made by them, that anyone was forced by the respondents to buy bagging as a condition of getting ties. On the cross-examination of this witness, the following facts were brought out:

He had been a customer and a representative of the Ludlow Associates, manufacturers of cotton bagging, for many years, and never purchased his ties from the respondents before 1916. He had

been the local agent of the Pittsburgh Steel Company and the Atlantic Steel Company, both manufacturers of cotton ties, who had every previous year supplied him with ties. They refused to supply him with ties in 1916 (surely not because he would not buy American bagging), and in his extremity he came to Mr. Fitzhugh of the Williams Company, the agents of the American Manufacturing Company, who kindly helped him out by selling him 5,000 bundles of ties owned by the American Manufacturing Company.

In 1915, Korndorffer got his ties from the Ludlow Associates, who furnished him his bagging (fol. 123). In 1913, 1914, 1915 and 1917 Korndorffer had no trouble in getting his ties without buying American bagging (fol. 130). *The only time he claims that he was compelled to buy American bagging was in* 1916 (page 64, fol. 131). In 1915 and previous, Korndorffer got his ties as well as his bagging from the Ludlow Associates. When asked why he did not buy his ties, or try to buy his ties from the Ludlow people in 1916, whose bagging he was handling and had for a long time handled, he answered:

"Simply because they do not manufacture ties, *and do not handle ties.*"

This, after he had already testified that he got his ties from the Ludlow Associates in 1915.

> "Q. Did you make any effort to get ties from them?
>
> "A. Yes, sir—no, I did not make an effort to get ties from them, but I did make an awful effort—

"Q. To get them from Williams & Company?

"A. No, sir, from the Ludlow people, to try to straighten out the tie question to get some ties. We applied to them for help as we are getting desperate. It looked like we were not going to get any ties at all and *we were handling* 700,000 *yards of 'their' cloth and we thought that 'they' might have some influence with the tie people*, so we appealed to them" (fol. 132).

Korndorffer further testifies:

"I asked them to get us some ties. *They stated they were not in the tie business; that they happened to have a few bundles of ties for some Texas people*, and for us to be patient, they thought we would get some ties. We appealed to them to try to help us and *they gave us the name of the Connors-Wyman Company of Birmingham, and the Atlantic Steel Company, at Atlanta, and the Pittsburgh Steel Company of Pittsburgh. They all refused to quote us*" (page 65, fols. 134, 135).

It will be noted that the Ludlow Associates *did not refer him to Warren, Jones & Grats for ties* because they had already supplied the Ludlow Associates with the ties for Korndorffer's bagging.

After being refused ties by everyone with whom he had previously dealt, including the Ludlow Associates, from whom he had annually purchased 700,000 yards of bagging, who likewise deceived him if his statement above is true, Mr. Fitzhugh of the Williams Company sold him 5,000 bundles or 150,-

000 ti[illegible], and at the same time sold him 100,000 yards [illegible]bagging. These ties came out of the stock of the American Manufacturing Company's ties which was 50,000 ties more than the allotted number to go with 100,000 yards of bagging, "pattern" consisting of six yards and six ties. This occurred in the month of May before the market opened, when everybody else to whom he had applied refused him ties. And Fitzhugh later, on the 23rd of August, when the market had opened, sold and sent him 10,000 more bundles of ties, without any bagging, a total of 15,000 bundles in 1916 (page 66, fol. 137), *that being the greatest quantity of ties he had ever purchased in any year,* and this without selling or asking to sell him a single yard of bagging beyond the first mentioned 100,000 yards—50,000 yards of which he offered to take back. *So that this man obtained* 15,000 *bundles of ties,* 450,000 *ties in all, enough for* 450,000 *yards of bagging, and he bought only* 100,000 *yards.*

Yet, though Mr. Fitzhugh was the only one who did help him, with base ingratitude, he writes him in complaint. The following letter of Mr. Fitzhugh an answer to his letters of May 24th and 25th is self-explanatory:

> "We see nothing in the correspondence you enclose which could be considered as a hard-shop on you. Our principals were able to get only a limited number of cotton ties of the Carnegie Steel Company and they cannot possibly ship them all out in June and July. The mills are making the ties as fast as they can. You know what demands the Government is making on all of the tie manufacturers and you realize that the Government's orders must

be taken care of first. *You cannot possible need all of your ties in June and July and if they are shipped along to your customers as they need them during July, August and September, their requirements will be filled just as well as if they were shipped at once, earlier* in the season. *If you will consider the matter further you will agree with us that your position is not reasonable. We feel that every jobber in these times ought to realize the difficulties of the manufacturers and do all they can* to help them. *If you want* 3,000 *bundles of ties for shipment, say* 1,000 *each, in August, September and October from the mill, we will see if we cannot get them for you, but to expect all in June and July seems to us unreasonable,* and unless you will change your position that you do not want any August ties, we do not see how we can help you. We are taking our supplies from scattered shipments during July, August and September.

"Very truly yours,

"P. P. WILLIAMS & COMPANY."

(page 70).

This unreasonable man who obtained all the ties he required for his business, who got them in suitable time for his market, got them entirely out of the supply purchased and owned by the American Manufacturing Company, a competitor of the Ludlow Associates, whose agent he was, and got all he ordered, all he bargained for, at the very beginning of the season, and was unreasonable as to the time of the delivery of them, bases his charge that he

was "compelled" to buy 100,000 yards of American bagging on a conversation had with Mr. Fitzhugh, which he subsequently detailed as follows:

> *"I do not think there was anything said about bagging when we bought the ties, except Mr. Fitzhugh—I think he said, he did say, 'Can't you use some American bagging?' I said 'No,' and he said, 'Well, I am selling it alongside to anybody.' I said, 'Of course, in your territory you can handle American bagging where they require it, as in the case of Ludlow with us'"* (page 73, fol. 153).

It is needless to say that Mr. Fitzhugh, who is far more worthy of belief than Korndorffer, entirely denies Korndorffer's version of the sale of the American bagging. Mr. Fitzhugh says he called Korndorffer on the telephone to try to sell him some bagging, argued with him about it and finally at his request, sent him two rolls of bagging as samples—one was Calcutta bagging—the other Borneo Brand made by American Manufacturing Company. That Krondorffer afterwards called him up and ordered the American Borneo Brand—100,000 yards and at same time ordered 5,000 bundles of ties (page 276, fol. 646).

This is the only witness who testifies that he bought bagging under compulsion in order to obtain a supply of ties. WE CHALLENGE THE COUNSEL FOR THE COMMISSION TO POINT TO ANY OTHER TESTIMONY IN THE RECORD WHERE THIS MAN OR ANY OTHER PERSON MAKES A CLAIM TO THE CONTRARY. Here is a summary of the testimony of each witness.

S. H. Lowenberg, who made the complaint to the Commission, testified "Williams & Co., and Elmer were the only parties that we could get any quotations from at all."

"We tried Atlantic, Connors-Weyman and Pittsburg Co. They advised us they were all out of the tie business" (fol. 156, page 74).

Q. *You did not know any people at all from whom you were able to purchase ties except C. O. Elmer and P. P. Williams & Co.?*

A. *That is all* (fol. 156).

I have been able to get all the ties I wanted from P. P. Williams & Co. (fol. 158).

Q. *Were you required to buy bagging to get the ties?*

A. *No, sir* (fols. 159-166, 167).

The witness testified that he went out of business because he *"understood"* he was required to buy 100,000 yards of bagging with 3,000 bundles of ties (fols. 174-175). *"Korndorffer told him so"* (fol. 165).

Q. They never told you they required you to buy 3,000 bundles?

A. I have no record of it. I don't say they told me that.

Q. *That is the general impression you have and that is all you have to say about it?*

A. Yes, sir (page 82, fol. 175).

Lowenberg had formerly been the agent for the Pittsburg Steel Co.

Q. Why did you discontinue your agency for the Pittsburg Steel Co.?

A. They stopped manufacturing them so they claimed.

Q. Is it not a fact that the Pittsburgh Steel Co. have made ties this very year?

A. I could not say so.

Q. They told you they had discontinued your agency?

A. Possibly they did. *We certainly got the information from them that they had discontinued the manufacture of ties.*

Q. Will you say that they have not made ties every year since?

A. I would not say because I do not know (fol. 180).

Q. Your only and sole effort last year to get ties was from Elmer & Co. and P. P. Williams & Co. You got your ties and made no effort to get them elsewhere, but were still dissatisfied and wanted to *complain to the Federal Trade Commission on the supposition that possessed your mind that somebody controlled the situation.*

A. *That is about it* (page 85, fol. 181).

This is the character of the evidence and of the witnesses that Federal Trade Commission produces to support the allegations in the complaint charging responsible business men with the violation of the Federal statutes for which they might be indicted as criminals.

Not a single other witness, and the Commission examined in all sixteen witnesses, testified that he was compelled to buy American or any other kind of bagging in order to obtain ties. We quote in detail from the other fourteen witnesses: Charles Platter of Boren & Stewart testified that he had carried over 35,000 yards of bagging from 1915. He had purchased this with a proportionate amount of ties from Warren, Jones & Gartz. He sold his ties, 6,000 bundles, to M. M. Graves as a profit in December, 1915; in the spring of 1916 before

the market opened he came back for more ties to go with 35,000 yards of bagging carried over (page 98, fols. 212, 216) and desired to purchase 6,000 bundles of ties—just the number he had sold to Graves. He was told he could not have them then, but he did get a telegram from Warren, Jones & Gartz in September, 1916, offering him all the ties he wanted (page 100, fol. 217).

W. M. Foster of Early-Foster Co. bought all the ties he wanted from Williams & Co. in 1916 without bagging (page 129, fol. 289).

Mr. M. Graves, dealer in ties and bagging, sells American bagging and sugar cloth purchased from Young & Metzner. In May, 1917, Warren, Jones & Gratz did not have ties to spare. They did furnish him ties to go with the bagging he had purchased (page 137), and he got the ties for sugar cloth, 40,000 bundles from Warren, Jones & Gratz as agents for the Carnegie Co. through Young & Metzner, who sold him the cloth (page 137, fol. 309). Shortly thereafter on May 19th, Warren, Jones & Gratz by letter offered to sell him 25,000 bundles of ties without bagging (page 137, fol. 310).

Edward Brim, who was "kind of speculating" in ties (page 159, fol. 361) tried to buy from Warren, Jones & Gratz in February long before the market opened. He did not get his ties then but did get them in September and without bagging (pages 158, 159, fol. 359). Had sufficient to carry over a stock of ties each year.

J. C. Werner of Mente & Co., dealers in sugar cloth and American bagging, also manufacturers of pieced or remade ties:

He only had an impression (page 162 fols. 369-375).

"In 1915, bought 20,000 bundles of ties through Elmer; that is, we thought we bought them" (page 161, fol. 366). "Elmer told me he could not let him have the ties on account of not buying bagging. I do not know which Elmer it was. He was in the office. I do not know whether he was one of the firm or not" (page 162, fol. 367). "It was over the telephone" (page 164, fol. 372).

This is his sole evidence on this topic. He did get ties all he wanted without bagging in 1916, (fols. 373, 378, 377, 380) and also in 1917. Got all the ties he needed in his business in 1915, 1916 and 1917 (page 167, fol. 380).

Nowhere does the witness say that he was ever compelled to buy bagging in order to secure ties.

C. Lee McMillan, in bagging business at New Orleans.

He tried to buy bagging and ties from Warren, Jones & Gratz, through C. O. Elmer, during 1915, 1916, 1917.

"Elmer read to him a letter he wrote them offering to guarantee any transactions that McMillan might have with Warren, Jones & Gratz. They still declined to sell him" (page 171, fol. 391, page 173, fol. 395).

McMillan had defrauded Warren, Jones & Gratz, out of several thousand dollars, and they exercised their legal right to select their customers and they did not choose to deal with frauds. McMillan had dealings with Atlantic Company, resulting in a

law suit. They refused to deal with him (pages 182-183). Connors-Weyman and Pittsburg Steel Company, also refused to deal with him (pages 180, 181, fol. 415).

R. C. Wilkerson, a broker retired from business. The attorneys for the commission asked this witness a number of incompetent questions which, with his answers, have no relation to the matters under investigation (pages 88, 89).

W. F. Bridewell, an agent for the South Carolina Bagging Co., testified that on May 19th, 1917, before the market opened, Williams & Company wired him "will not sell ties without bagging" (page 108). Nothing more.

August Wisrod, in storage and warehouse business, got a telegram from one W. H. Wingle to inquire about ties. Called up one Adolph Risser of Galveston, on telephone who told him he could not sell ties wthiout bagging (pages 120, 121).

G. H. Fowler, Fordyce, Arkansas, with a grocery firm. Had a conversation with one Wilbur Orth of a brokerage firm at Pine Bluffs, Arkansas. Orth advised that he could not sell ties without bagging, page 114, fol. 253). Neither of these witnesses had any conversation with respondents.

Paul Kling, Secretary for H. & C. Newman, testified that:

> "Mr. Elmer reported that he could not fill an order for *I think* 5,000 bundles of ties which he had taken in the morning because Warren, Jones & Gratz declined to fill the order because we had not purchased any bagging."

Mr. Elmer it must be remembered was a broker in New Orleans, employed by American Mfg. Co.

to sell them bagging with a guaranty of so much a year (fol. 853, pages 362, 363; pages 187, 188, fol. 431). The American Co. was selling them ties with their bagging just as the Ludlow Co. was—Each company having purchased its supply of ties from Carnegie Co. But this witness admits that he did buy 3,500 bundles of ties from Warren, Jones & Gratz in 1916 and 5,000 bundles in 1917 without bagging and that he obtained all he wanted to buy and without bagging (fol. 436, pages 189, 190).

Benjamin Margolius, was the proprietor of two corporations, the Atlantic Jute Mills, and Southern Bagging Mills. He had defaulted on a previous contract with Warren, Jones & Gratz. They refused even to quote him (pages 238, 239). He testtified:

> "The Atlantic Jute Mills were in operation only a part of 1916. 'It is a new corporation. In 1917, our first full year we made every effort to obtain ties from the manufacturers *and did not succeed in* buying a single bundle' (*page* 238, *fol.* 551). *'I made every effort to buy them. I tried to buy from Atlantic Company, from Connors-Weyman; from Pittsburg Steel Company, Sharon Steel Company, or anybody I knew in the business or had ever been in it. They all declined to quote us'*" (page 243, fol. 564).

John S. Jenkins, the Dixie Manufacturing Company, manufacturer of rewoven bagging. He testified:

"We asked Warren, Jones & Gratz to sell us ties in 1916 and they said they had none to offer. They did sell us ties later (page 231, fol. 556), then we got all we wanted (page 233, fol. 541); we got them between June 30 and July 13" (page 234, fol. 543).

W. P. Gohlson, secretary South Carolina Bagging Co. and also of the India Bagging Co., Henderson, N. C.

Though not relevant to the inquiry he was asked and permitted to testify that his business suffered because he was unable to procure ties in 1916 (page 210, fol. 486). These two companies are practically the same (fol. 490). Exactly what each manufactures is not disclosed by the record for their Secretary and Treasurer, Gohlson, who was the only officer of the Company, testified two ways on every question asked him except his name (pages 212-213).

Gohlson testified that the Carolina Co. employed the witness, W. F. Bridewell, at Little Rock Arkansas, and Lyle and Lyle at Huntiville, Alabama, as their agents (page 208, fol. 482; page 212, fol. 490). While claiming that he could not get ties in 1916, he admits that though he never tried to purchase from Warren, Jones & Gratz their agents sold him all the ties he asked for. Claude Hutchinson testified that he sold him, and he admitted that he bought from Hutchinson 18,000 bundles of new Carnegie ties in 1916 (page 209, fol. 484; page 214, fol. 495). He admits he sold them by the pattern with his bagging (page 215, fol. 497) and will not deny that he sold a large part of them at a profit of $1.15 on each bundle (page 215; fols. 498, 499).

In November or December, 1916, Claude Hutchinson bought back from the Carolina Co. 15,000 bundles of these new ties, and Gohlson admits that in 1916 he also sold to Hutchinson 800,000 pounds of spliced ties (page 222, fol. 575); *that for three or four years he had been selling ties to Hutchinson.* In 1917, he testified, the Carnegie Co., through Warren, Jones & Gratz, sold him 25,000 bundles of new ties (page 217, fol. 502); through his brokers, Bridewell, and Lyle & Lyle, he purchased 35,000 bundles of new ties through I. W. Cooper, agent for Warren, Jones & Gratz, the Carolina Bagging Co., purchased 45,000 bundles new ties from 1914 to 1917, and Mr. Cooper testifies he sold them all they ever asked for (page 223, fol. 516; page 339, fol. 800).

A large part of these ties the Carolina Co. sold without bagging at a profit. Some they sold to W. M. Foster of Earley-Foster Co. at an advance of 25 cents a bundle (pages 129, fol. 290). And their agent, Bridewell, testified that he sold 25,000 bundles of these ties as they came in solid car load lots out of Pittsburg for account of Carolina Co. and at the prices they quoted (pages 111, 112; fols. 246, 247). Instead of being without ties the Carolina Co. was speculating in ties. His brokers, Bridewell & Lyle, were circularizing the cotton States all this time, stating that they were manufacturers of new ties, and urging all to buy before the market opened as ties were going to be scarce, and they *were advertising that they would not sell ties without bagging.* Gohlson finally admitted on cross-examination that he had no difficulty in procuring ties. He could get a better freight rate out of Pittsburgh for trans-Mississippi territory than

he could from Atlanta or Birmingham and that his trouble laid there (pages 224, 225; fols. 519 to 522). A number of letters were voluntarily produced by one of the respondents, Mr. W. H. Fitz Hugh of P. P. Williams Co. and counsel for petitioners copiously quotes them in his brief, but carefully abstains from giving the testimony explanatory of them. Mr. Fitz Hugh received instructions from respondents not to sell the American ties to those using sugar bags—the reason—Young & Metzer and Federal Sugar Co. had already been supplied with all ties required for their output—See letters in Appendix.

As to Gayer & Co., Vicksburgh. In 1915, Mr. Fitz Hugh had sold Gayer & Co. 33,000 bundles of ties at one time (fol. 612, page 262). And he did in 1916 sell him 11,000 bundles (fol. 614, page 263), although he bought Ludlow bagging (page 263). Boven & Stewart, as we have shown hereinbefore purchased ties without bagging—sold them to M. Graves at an advance and came back for more, which was refused until after others had been supplied.

The foregoing embraces the story of every witness and all the evidence produced by the Commission to support their finding that

> "purchasers of ties were '*oftentimes*' compelled to buy bagging manufactured by American Manufacturing Company from said respondents in order to procure a sufficient supply of steel ties,"

and we do not hesitate to say that there is not a scintilla of evidence in the record to support this finding, *and we challenge the attorneys for the Fed-*

eral Trade Commission to question the accuracy of the foregoing statements taken from the testimony in the record, and to refer to any testimony in the record in contradiction of that herein quoted by the respondents:

POINT VII.

Errors in the admission of evidence.

From the viewpoint of a lawyer this so-called investigation took no more the character of a legal proceeding than the meeting of a sewing circle.

There were legal errors committed in the examination of every witness as conducted by the attorneys for the Commission. Opinion and hearsay testimony was given by every witness for the Commission. No witness was confined to a statement of the facts.

Korndorffer, the only witness who gave any testimony approaching a confirmation of the charges against the defendants, was asked: "Whether or not you were unable at any time to secure bagging and ties as your requirements demanded?"

A. We have represented the Ludlow folks, I suppose—well, I should say, forty year— at any rate, the whole thirty years I have been connected with my firm in Natchez, and last season, 1916, *we had an awful time trying to get ties, and we could not get any ties from any so-called independents, or Warren, Jones & Gratz, or P. P. Williams, without buying American Bagging, as you will see by the bill here that we were forced to buy* 100,000 *yards of American Bagging to get ties.*

Q. Is that the bill?

A. Yes, sir.

Q. With whom did you negotiate in this effort to secure ties in the fall of 1916?

A. With pretty near I should say every ties concern in the country. It was *utterly impossible. We could not get ties in any manner, shape or form without buying the American Bagging*" (page 53, fols. 106-107).

The "bill" referred to by this witness is found at page 16 of the testimony, is only the ordinary invoice for 100,000 yards of bagging in two separate bills, and a letter from Mr. Fitzhugh of Williams & Co. informing Korndorffer that he was diverting to him two car loads of ties that should have gone to other people, and ends with this expression: "We are glad to be able to help you in the matter" (pages 56, 57; fols. 113, 114).

This testimony is purely opinion evidence without a solitary fact on which to base it other than that Williams & Co. gave him ties when no one else would, and gave him ties by depriving some one else of them. He was not asked to state the facts. He just gave forth pure "loose talk," as did every other witness examined by the attorneys for the Commission. This testimony is clearly incompetent *and this is the only evidence in the whole record to support the finding that "'oftentimes' dealers and jobbers were compelled to buy American Bagging in order to obtain ties."* On cross examination it developed that even this opinion of the witness was unwarranted.

William & Co. sold him 10,000 bundles of ties in August, 1916, without bagging (fol. 137), making 15,000 bundes in all, in 1916, enough to go with

450,000 yards of bagging. And in 1917 he got all the ties he wanted from P. P. Williams & Co. without buying any bagging (fol. 144). There were four other manufacturers of new ties and numbers of makers of second-hand ties, and he is asked and makes this sweeping declaration of inability to procure ties without giving any of the facts showing that any of the other manufacturers had refused him, or the reason why if they did.

S. H. Lowenberg, the witness who made the complaint, never tried to buy ties from Warren, Jones & Gratz in 1914, 1915 or 1916 (page 73, fol. 163). Did not try to buy from P. P. Williams & Co. in 1916 (page 164). He had defrauded Warren, Jones & Gratz in a previous year (page 80, fol. 169; page 86). He was allowed to testify as follows:

Q. Who told you you had to buy 100,000 yards of bagging and 3,000 bundles of ties?

A. I consulted a good deal with Mr. Korndorffer. A few years ago we used to buy a good deal of it together.

Q. Korndorffer told you?

A. Korndorffer told me the facts of it. Showed me a letter or telegram (page 78, fol. 165).

This is the character of evidence the Commission have based their findings on. Lowenberg further is allowed to say: "I think that was done. * * * *I have not the evidence to* produce in writing but *I think* it was the *general price made* through Warren, Jones and Gratz, who were practically the controllers of the situation (pages 74, 75, fol. 157).

> "We understood that Warren, Jones & Gratz *handled absolutely* the general tie situation in this country" (page 84, fol. 179).

And he is asked:

Q. Was it not the fact that C. Lee McMillian & Co. have been unable to get any ties lately? (page 75, fol. 158).

It may not be out of place here to refer to the facts that there is proof in the record that these two witnesses, Lowenberg and McMillian had both defrauded Warren, Jones & Gratz in former years.

R. C. Wilkerson a broker formerly representing a manufacturer who went out of business, is asked such questions as these:

Q. Do you know of any one else who |manufactures ties except the Carnegie Steel Co.?

Q. Can any one else get ties from Warren, Jones & Gratz except Williams & Co.?

Q. Why is it you could not buy ties from the mills at Birmingham and Atlanta in order to compete with P. P. Williams & Co. if you wanted to stay in the business?

Q. You had to discontinue business because P. P. Williams & Co., could sell them lower than you could possibly afford to do it. Was not that the reason?

A. No, sir. I had to discontinue business because I did not have any connection that would give me the prices.

Q. That is just another way of stating the same thing. You could not sell the goods at a price where you could compete with P. P. Williams & Co.—*is not that so?* (pages 89 and 90). This witness knew absolutely nothing that was relevant to the charges against the defendants set forth in the complaint, yet the attorney for the Commission tried to make him express opinions that would create an atmosphere of prejudice against the defendants, Warren, Jones and Gratz.

G. H. Towler had a conversation over the telephone with one Wilbur Orth, of Pine Bluffs, Ark., whom he said "had the account" of Warren, Jones & Gratz. He detailed this conversation to hold the defendants responsible (page 114, fol. 251).

August Wisrodt of Galveston, in the storage business was asked by a Mr. Wingle of Mills Point to get him some ties. He telephoned one Adolph Risser in Galveston (pages 119, 120, fols. 265, 267), who "used to be with Mr. Price. When Mr. Price was alive he was Mr. Price's chief clerk, *so I presume* he was Chief Clerk in the office of Warren, Jones & Gratz (page 121, fol. 269).

W. M. FOSTER:

Q. To whom did you give the order?

A. I did not buy from Warren, Jones & Gratz. I gave it to the Sheer Co. (page 123, fol. 275).

Q. The Sheer Co. are wholesale jobbers at Waco, who buy, sell and trade in ties?

A. Yes, sir.

Q. Do you want the Commission to understand that the Sheer Co. are agents of any kind for Warren, Jones & Gratz, or simply handle their goods?

A. They simply handle their lines of bagging and ties as far as I know (page 126, fol. 281). I made a contract direct with Warren, Jones & Gratz while Sheer Co. sold their goods (page 128, fol. 286).

J. C. WERNER of Mente & Co., New Orleans.

This witness admitted on cross examination that he got all the ties he desired, in 1916, 1917. He was asked on the direct about an incident that occurred early *in* 1915. His examination took place *Octo-*

ber 22, 1917. He was permitted to testify: "We have not been able to buy ties from Warren, Jones & Gratz since 1915, they insisted on our buying bagging with ties" (page 161, fol. 365). "They (Elmer & Co.) got us ties and we bought 25,000 bundles. They (Elmer & Co.) quoted us and we accepted, but the same day "*they*" *must have received a wire from St. Louis* and said they could not sell us ties without a corresponding amount of bagging" (page 164, fol. 372).

Q. Do you know which Elmer it was?

A. *No, sir. It was over the 'phone I do not know which it was* (page 164). It developed that his whole story was founded on an impression he received from something that occurred in 1915 (page 165, fol. 375). This is the sole testimony he gave that had any relevancy to the matters under investigation.

W. P. Gohlson, secretary, Carolina Bagging Company who manufactures both ties and bagging is asked:

Q. Testimony has been introduced to the effect that Warren, Jones & Gratz, have adopted a policy of selling ties only with an equivalent amount of cotton bagging. Will you please state what a continuance of that policy will mean to your business if you were unable to get cotton ties from Warren, Jones & Gratz without cotton bagging? (page 210).

He also testified that his brokers tried to buy ties, from Warren, Jones & Gratz, that they could not, that they wired him to that effect and did not even produce the telegram (page 209, fol. 483).

L. W. McMillan, like the witness Werner, testified to his *impressions* and was also permitted to testify from his *imagination* as to matters susceptible of exact proof, such as the number of ties made by the several manufacturers.

Every single witness was asked incompetent questions and allowed to tell "what you think," to give hearsay and opinion evidence. To recite them all would fill a book almost as large as the transcript of the record herein.

POINT VIII.

The conduct of the Federal Trade Commission in this case discloses either personal prejudice against the respondents or political propaganda.

The conduct of respondents condemned by the Trade Commission was in truth most praiseworthy and deserves the highest commendation. From motives of patriotism they sacrificed an opportunity of making a huge fortune through the necessities and at the expense of their fellow citizens. When the great war was at its peak and the world was demanding cotton and steel for ammunition and covering, when labor unions were threatening to tie up the transportation system of the Country and speculators were seeking to corner the market in ties, Mr. Anderson Gratz recognizing the necessity for gathering the cotton crop and the need of steel ties to bind the bales, told the president of the Carnegie Co. that "They had better make all "the ties they could and throw those not needed "into the ocean rather than run short. That the "prosperity of the United States depended on the "movement of the cotton crop which could not be "moved unless they made the ties necessary to "cover the crop." He urged the competing manufacturers—Atlantic Steel Co. and the Connors-

Wyman Co. to do the same. He made a price for the ties which was less than the selling price of the hoops from which they were fabricated, though the fabrication put upon them an additional cost of $2.00 for the ton. He requested his competitors to furnish ties to his own customers and reliquished to them the profits from these sales; and for the years 1915, 1916 and 1917 steel ties were the only commodity on the market for which the opening price each year was less than the closing price of the year before. To steady the market and allay the panic demand for ties he sold up to July 31, 1916,—1,363,478 bundles of ties or 371,912 bundles more than the total output of the Carnegie Co. for the whole year and faced financial ruin if the purchasers had insisted on the performance of their contracts.

And all of these facts were known to the Trade Commission before they started their investigation, for they were informed of them both by Mr. Gratz and by the trade throughout the country, which they had completely circularized. Yet what did they do? They framed a complaint which in the 2nd count charges the respondents with acts for which they might be indicted and imprisoned, if guilty, yet they do not offer a single witness or a scintilla of evidence to substantiate the charge. They make no finding of fact as to the truth or falsity of the charge and tucked away in the tail end of their conclusions of law they make the lame and impotent statement "that there is *not sufficient proof* submitted in the hearing to *sustain* the paragraph in the complaint charging a violation of Section 3 of the Act of Congress known as the Clayton Act," *well knowing that there was no proof whatever submitted, and that they never had any*

proof to submit. But this is not all. They select as the complainant a man, S. H. Lowenberg who "got out of the business because of the difficulties of it" (page 78, fol. 165), *his principal difficulty being a fraudulent failure in which he defrauded the respondents out of several thousand dollars.* And who were the witnesses? Listen! Lee McMillan, one of the chief witnesses had also cheated respondents out of some thousands of dollars; Benjamin Margolius had defaulted on his contracts. M. M. Graves, W. P. Gohlson and his agent, W. F. Bridwell, Charles Platter and Edward Brinn, who were speculating in ties and naturally had no friendly feeling for the respondents who spoiled their winnings. G. H. Fowler, August Wisrod and J .C. Werner detailed conversations over the telephone, and W. W. Foster detailed personal conversations with persons who had no relations with the respondents whatsoever. R. C. Wilkerson knew nothing on the subject. Paul Kling and John S. Jenkins testified that they obtained all the ties they desired from respondents and without bagging. This embraces the entire list, their character and the character of their testimony.

And what does the Commission find? Merely that as the result of these extraordinary and patriotic efforts by the respondents they induced the Carnegie Steel Co. to make so many more ties than they otherwise would have made had they occupied a controlling position in the trade? This is the extent of their offending as found. Nothing more!

We hold that it is impossible to conceive of a disinterested public commission instituting this in-

vestigation and making the order made in this case wthout some ulterior motive of personal prejudice or political propaganda; that constitutional government was instituted among men to prevent just this kind of abuse, and the duty under our Constitution devolves upon our courts to suppress it.

Respectfully submitted,

THOMAS F. MAGNER,
Counsel for Respondents.

APPENDIX.

LETTERS IN EVIDENCE CONTAINED IN TRANSCRIPT.

July 7, 1916.

Mr. W. G. Clyde,
Carnegie Steel Company,
Pittsburg, Penna.

Dear Mr. Clyde:—

Enclosed find letter received today from the Ludlow Manufacturing Associates, and copy of my reply.

Apart from a few unpleasant words used by Mr. Wallace, he is doubtless justified in the way he looks at things.

In order to make Ties go around as far as possible, it is absolutely necessary to keep them out of the hands of speculators. *A good many people have wanted to buy Ties for the purpose of holding them for higher prices. These people we have declined to sell and have tried to limit our sales to merchants having a stock of Bagging of the American Mfg. Co., Ludlow Company or somebody else's; the idea being that the people with Bagging would be more apt to desire the Ties to sell promptly.*

So far we believe that we have done pretty well, and except for a lot of growling do not seem to have made any trouble.

Of the Ties bought by the American Mfg. Co., 120,000 bundles have been actually sold in the Southeast, 130,000 bundles are held to cover cur-

rent order from Mr. Priddy (N. B. Co.), Mr. Sparks and Chleston. 60,000 are for sole by P. P. Williams & Co. This office is making some sales right along. The rest of the 500,000 Ties will be sold as fast as Warren, Jones & Gratz find trade amongst people whom we think will promptly re-sell.

A good many Ties are now being sold by Atlanta and Conners. Second-hand Ties are being distributed in the Southeast.

I will be very much pleased to have you write me to St. Louis, Mo., Saturday making any suggestions that you may care to make as to a better method of handling this business.

Please send the correspondence from Mr. Wallace along with your letter.

Yours truly,

AG:W (Signed) ANDERSON GRATZ.

January 11th, 1916.

Mr. C. N. WALLACE,
Pres., Ludlow Manufacturing Associates,
Boston, Mass.

DEAR MR. WALLACE:

Referring to your letter of December 31st:

Yesterday I was in Pittsburg and had a conference with the officials of the Carnegie Steel Co.

Their net stock of Ties on hand at present is about 330,000 bundles. They think they can make 500,000 bundles more by July 1st, they will try

to add something to that. After the first of July their manufacture cannot exceed 125,000 bundles per month, if even it is possible to make that number.

I understand that you have quite a lot of Ties carried over, which should help you to begin the season. Under the circumstances, I think we are justified in asking you to moderate your demand for 150,000 bundles a little.

You can take this letter as giving you an option at our lowest opening price on 120,000 bundles of Ties, open to you for one week after we make the price, whether that be in April or July.

It is not possible for the price to be low. *To induce other manufacturers to make any Ties so that the crop may be covered, it may be necessary to have quite a high price, but all that will have to be decided in the future.*

The thing is that giving you this kind of an option on 120,000 bundles is giving you a larger offer on our prospective supply than has heretofore been the case.

If I am correct in thinking that you have between 50,000 and 75,000 bundles already on hand, *you have an ample supply until October, before which time we certainly hope that we will be able to care for any additional quantity that you may require.*

Yours truly,

(Signed) ANDERSON GRATZ.

January 19, 1916.

MR. C. N. WALLACE,
Ludlow Manufacturing Associates,
111 Devonshire Street,
Boston, Mass.

DEAR SIR:—

Your favor of January 18th received.

The trouble in the Steel business is to get raw Steel—however, we are going to have some Ties.

You may consider this letter an option on 150,000 bundles, open to you for one week after we name a price. Ties to be ready for immediate shipment at that time.

If, in the meantime, you can arrange storage for these Ties at Galveston, so much the better.

I suggest that it is quite probable that there may be trouble getting shipments from Pittsburg through, and it will be well if you can ask the railroad company at Galveston to take care of the Ties at the earliest possible date.

Allow me to say that if it had not been for your consistent preference given to us in this business, we most certainly could never have arranged with the Carnegie Steel Co. to give you this option.

Yours truly,

(Signed) ANDERSON GRATZ.

July 7, 1916.

MR. C. N. WALLACE,
Ludlow Manufacturing Associates,
111 Devonshire Street,
Boston, Mass.

Dear Sir:

Your letter of July 6th received.

You are under some misapprehension. I have never controlled the number of Ties to be made nor the price. My advice has usually been taken as to the number of Ties manufactured, and has sometimes been taken as to the price—not always.

This year I told the Carnegie Steel Co. that it was necessary to have 1,000,000 *bundles of Ties by the first of July, based on their competitors making about so many. Now, either the competitors have not made that many, or they are not willing to sell them freely, and the demand thrown on us has been more than we can supply.*

Amongst the earliest sales made by the Carnegie Steel Co., were 200,000 bundles to the Ludlow Mfg. Co. and 500,000 bundles to the American Manufacturing Co.—total 700,000 bundles, deliveries scattered over until November. Beginning July 1st with 1,000,000 bundles, we have counted on the Carnegie Co. supplying us a total of 1,400,000 bundles. Including the 700,000 bundles mentioned above, Warren, Jones & Gratz has sold 1,330,000 bundles—*just how it would be possible for them to continue selling to anybody I do not know.*

The American Manufacturing Co. is continuing to supply Ties out of the 500,000 *bundles they have bought, and have so far obligated about* 350,000 *bundles.* That leaves 150,000 bundles to bring Bagging business.

Messrs. Warren, Jones & Gratz as the selling agents for the American Manufacturing Co. cannot be allowed to sell those Ties except along with their Bagging. If we can get any more from the Carnegie people, they will be for sale first to the people who have bought the other 1,300,000 bundles, and then to the trade in general.

The Ludlow Company have been much better protected in this matter than the American Manufacturing Co. You have a provision of 335,000 bundles, while the total Ties on which the American Company had any claim were 330,000 bundles. *If anybody suffers in the whole operation, it will be the American Company.*

To *gain an advantage on our competitors and guard ourselves from disaster, we should have taken the Carnegie Co.'s whole* 1,400,000 *bundles, and would have been glad to do so except for the broader policy protecting the Carnegie Co.'s trade by giving Ties to every one who had been their customers in years past.*

I am expecting to hear to-day as to additional supplies of Ties, but fear that there will be very few possible for us to get.

This is one year when the Carnegie Steel Co. can well afford investigation. They have sacrificed their other business and large profits to make their usual quantity of Ties—have sold those Ties to their usual customers at a moderate price, even while others were getting from 10c. to 25c. per bundle more, *and now even you are disposed to criticize them because they have not made 50 per cent more ties they have usually made, and sold them to people who have not usually been their customers.*

Yours truly,

AG:W (Signed) ANDERSON GRATZ,

August 1, 1916.

MR. WM. G. CLYDE,
Ass't. Gen. Mgr. of Sales,
Carnegie Steel Co.,
Pittsburgh, Penna.

Dear Sir:

The prospects of the Cotton Crop are not so good, and whether the Crop is to be large or small, it certainly is late.

Everybody seems to have some Ties, and we no longer hear complaints from any source.

It now seems safe to do what we would have liked to have done before, and that is to offer Spot Ties broadcast throughout the Cotton Belt. I have, therefore, telephoned Warren Jones & Gratz to quote Ties to everybody from Norfolk west August-September shipment. There will be some sale no doubt, but I do not believe total purchases will amount to 25,000 bundles, which we will furnish from the American Manufacturing Company's Spot Stock.

Offering Ties in this way we will remove the last vestige of complaint, and will also encourage other holders of Ties to sell.

We have sold a good many Ties at $1.35 less 4 to the trade—some few at $1.35 flat. *Where your Ties have been billed to the American Manufacturing Company and then resold by the American Company without Bagging at a profit, account will be made to Carnegie for that profit, as you will remember that I told you the American Manufacturing Company's Ties were being bought only for sale with Bagging and would not be held for any profit where sold without Bagging.*

If the cotton crop really is short, it is quite possible that it may not be necessary to increase your manufacture in October beyond 100,000 bundles as first contemplated.

Yours truly,

AG:W (Signed) ANDERSON GRATZ.

August 3, 1916.

MESSRS. YOUNG & METZNER,
355 Vernon Ave.,
Long Island City.

Gentlemen:

Herewith find some Carnegie Freight Lists.

I quote you for account of Warren, Jones & Gratz of St. Louis, Mo., any part of 10,000 bundles Standard Arrow Cotton Ties for August shipment at $1.31¾ Pittsburg basis plus these freights. The Ties may be shipped from Youngstown or somewhere else.

Price is arrived at on the base of $1.35 less 4c. per bundle to large dealers plus ¾ of 1c. per bundle for August shipment. If you want these Ties for September, price will be another ¾c. per bundle higher, and so again for October.

This price good to you until Noon August 4th.

Yours truly,

AG:W (Signed) ANDERSON GRATZ.

August 3, 1916.

MR. WM. G. CLYDE,
Ass't. Gen. Mgr. of Sales,
Carnegie Steel Company,
Pittsburg, Pa.

Dear Sir:

Referring to your letter of August 2nd to Messrs. Warren, Jones & Gratz:

I have called up Mr. P. L. Wooster, P. A. of the Federal Sugar Refining Co., and offered them 3,000 bundles of Ties, which is all they talk about wanting.

I have also called up Messrs. Young and Metzner from whom you recently had a letter, and offered them 10,000 bundles.

Enclosed find copies of letters written in confirmation to each of these concerns.

I doubt if either will buy any Ties, but we are putting ourselves on record as offering them all they talk about wanting.

Yours truly,

AG:W
Enc.

(Signed) ANDERSON GRATZ.

30367

Counsel for Parties.

FEDERAL TRADE COMMISSION *v.* GRATZ ET AL., COPARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF WARREN, JONES & GRATZ, ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 492. Argued April 20, 21, 1920.—Decided June 7, 1920.

Under the Federal Trade Commission Act (Sept. 26, 1914, c. 311, 38 Stat. 717), an order of the commission requiring parties to desist from a course of business as unfair competition must correspond with the complaint which the commission is required to issue and serve as the basis for the proceedings; and where the complaint, liberally construed, is plainly insufficient to show unfair competition, the order is without foundation and, when challenged, will be annulled by the court. P. 427.

The commission's complaint alleged that some of the respondents were engaged in selling, in interstate commerce, directly to the trade or through their co-respondents, steel ties, manufactured by a certain company, made and used for binding bales of cotton, and jute bagging, manufactured by another company, used to wrap bales of cotton; that the other respondents, as their agents, sold and distributed such ties and bagging, in interstate commerce, principally to jobbers and dealers who resold the same to retailers, cotton-ginners and farmers; and that, with the purpose, intent and effect of discouraging and stifling competition, all of the respondents refused, and for more than a year had refused, to sell any such ties unless the prospective purchaser would also buy from them the bagging to be used with the number of ties proposed to be bought. *Held*, plainly insufficient to show an unfair method of competition. *Id.* 258 Fed. Rep. 314, affirmed.

THE case is stated in the opinion.

Mr. Huston Thompson, with whom *The Solicitor General* and *Mr. Claude R. Porter* were on the brief, for petitioner.

Mr. Thomas F. Magner for respondents.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

By an Act approved September 26, 1914, c. 311, 38 Stat. 717, Congress made provision for the Federal Trade Commission and declared its powers.

Section 4 defines commerce as "commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation."

Section 5.—"That unfair methods of competition in commerce are hereby declared unlawful. The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce. Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. . . . If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited

by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition."

Section 5 further provides that the commission may apply to the designated Circuit Court of Appeals to enforce an order, "And shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. . . . The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code. Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the

enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive."

Sections 6 and 7 empower the commission to require reports and compile information concerning corporations; to inquire concerning execution of decrees restraining violations of the anti-trust acts; to investigate alleged violations of such acts; to recommend readjustments of corporate business; to publish information and make reports to Congress; to classify corporations and make rules and regulations; to investigate trade conditions; to act, under orders of the court, as a master in chancery in certain designated circumstances, etc.

Undertaking to proceed under § 5, June 4, 1917, the commission issued a complaint containing two counts against respondents. The first related to unfair methods of competition, and the second charged violation of § 3 of the Clayton Act, approved October 15, 1914, c. 323, 38 Stat. 730. Respondents denied both charges. After taking much testimony the commission held there was no evidence to support the second count; but it ruled that respondents had practiced unfair competition and ordered that they, "their officers and agents, cease and desist from requiring purchasers of cotton ties to also buy or agree to buy, a proportionate amount of American Manufacturing Company's bagging and further that the respondents cease and desist from refusing to sell cotton ties unless the purchasers buy or agree to buy from them corresponding amounts of American Manufacturing Company's bagging, or any amount of cotton bagging of any kind."

Upon respondents' petition the Circuit Court of Appeals, Second Circuit, annulled the commission's order. 258 Fed. Rep. 314. It said, "We think there is no evidence to support any general practice of the respondents to refuse to sell ties unless the purchaser bought at the same time the necessary amount of the American Manufac-

turing Company's bagging, and that the commission has no jurisdiction to determine the merits of specific individual grievances."

The challenged order is based solely upon the first count of the complaint which follows:

"Federal Trade Commission

"*vs.*

"Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alex. Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer.

"The Federal Trade Commission having reason to believe, from a preliminary investigation made by it that Anderson Gratz and Benjamin Gratz, co-partners, doing business under the firm name and style of Warren, Jones & Gratz; P. P. Williams, W. H. Fitzhugh and Alex. Fitzhugh, co-partners, doing business under the firm name and style of P. P. Williams & Co., and Charles O. Elmer, all of whom are hereinafter referred to as respondents, have been, and are, using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect, on information and belief, as follows:

"I.

"Paragraph one: That the respondents, Anderson Gratz and Benjamin Gratz, are co-partners, doing business under the firm name and style of Warren, Jones & Gratz, having their principal office and place of business

in the city of St. Louis and State of Missouri, and are engaged in the business of selling, in interstate commerce, either directly to the trade, or through the respondents hereinafter named, steel ties made and used for binding bales of cotton, and which steel ties are manufactured by the Carnegie Steel Company of Pittsburg, Pennsylvania, and also selling, in the same manner, jute bagging, used to wrap bales of cotton, and which jute bagging is manufactured by the American Manufacturing Company, of St. Louis, Missouri.

"Paragraph two: That the respondents, P. P. Williams, W. H. Fitzhugh and Alex. Fitzhugh, are co-partners, doing business under the firm name and style of P. P. Williams & Co., having their principal office and place of business in the city of Vicksburg and State of Mississippi, and the said last-named respondents and the said respondent Charles O. Elmer, who is located and doing business at the city of New Orleans and State of Louisiana, are the selling and distributing agents of the said firm of Warren, Jones & Gratz, and sell and distribute the ties and bagging, manufactured as aforesaid, in interstate commerce, principally to jobbers and dealers, who resell the same to retailers, cotton ginners, and farmers.

"Paragraph three: That with the purpose, intent, and effect of discouraging and stifling competition in interstate commerce in the sale of such bagging, all of the respondents do now refuse, and for more than a year last past have refused to sell any of such ties unless the prospective purchaser thereof would also buy from them bagging to be used with the number of ties proposed to be bought; that is to say, for each six of such ties proposed to be bought from the respondents the prospective purchaser is required to buy six yards of such bagging."

It is unnecessary now to discuss conflicting views concerning validity and meaning of the act creating the commission and effect of the evidence presented. The

judgment below must be affirmed since, in our opinion, the first count of the complaint is wholly insufficient to charge respondents with practicing "unfair methods of competition in commerce" within the fair intendment of those words. We go no further and confine this opinion to the point specified.

When proceeding under § 5, it is essential, *first*, that, having reason to believe a person, partnership or corporation has used an unfair method of competition in commerce, the commission shall conclude a proceeding "in respect thereof would be to the interest of the public;" *next*, that it formulate and serve a complaint stating the charges "in that respect" and give opportunity to the accused to show why an order should not issue directing him to "cease and desist from the violation of the law so charged in said complaint." If after a hearing the commission shall deem "the method of competition in question is prohibited by this Act," it shall issue an order requiring the accused "to cease and desist from using such method of competition."

If, when liberally construed, the complaint is plainly insufficient to show unfair competition within the proper meaning of these words there is no foundation for an order to desist—the thing which may be prohibited is the method of competition specified in the complaint. Such an order should follow the complaint; otherwise it is improvident and, when challenged, will be annulled by the court.

The words "unfair method of competition" are not defined by the statute and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine as matter of law what they include. They are clearly inapplicable to practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was

certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade.

Count one alleges, in effect, that Warren, Jones & Gratz are engaged in selling, either directly to the trade or through their co-respondents, cotton ties produced by the Carnegie Steel Company and also jute bagging manufactured by the American Manufacturing Company. That P. P. Williams & Company of Vicksburg, and Charles O. Elmer of New Orleans, are the selling and distributing agents of Warren, Jones & Gratz, and as such sell and distribute their ties and bagging to jobbers and dealers who resell them to retailers, ginners and farmers. That with the purpose and effect of discouraging and stifling competition in the sale of such bagging all the respondents for more than a year have refused to sell any of such ties unless the purchaser would buy from them a corresponding amount of bagging—six yards with as many ties.

The complaint contains no intimation that Warren, Jones & Gratz did not properly obtain their ties and bagging as merchants usually do; the amount controlled by them is not stated; nor is it alleged that they held a monopoly of either ties or bagging or had ability, purpose or intent to acquire one. So far as appears, acting independently, they undertook to sell their lawfully acquired property in the ordinary course, without deception, misrepresentation, or oppression, and at fair prices, to purchasers willing to take it upon terms openly announced.

Nothing is alleged which would justify the conclusion that the public suffered injury or that competitors had reasonable ground for complaint. All question of monopoly or combination being out of the way, a private merchant, acting with entire good faith, may properly refuse to sell except in conjunction, such closely associated articles as ties and bagging. If real competition is to continue, the right of the individual to exercise reasonable discretion

in respect of his own business methods must be preserved. *United States* v. *Colgate & Co.*, 250 U. S. 300; *United States* v. *A. Schrader's Son, Inc.*, 252 U. S. 85.

The first count of the complaint fails to show any unfair method of competition practiced by respondents and the order based thereon was improvident.

The judgment of the court below is

Affirmed.

MR. JUSTICE PITNEY concurs in the result.

MR. JUSTICE BRANDEIS dissenting, with whom MR. JUSTICE CLARKE concurs.

First. The court disposes of the case on a question of pleading. This, under the circumstances, is contrary to established practice. The circumstances are these:

The pleading held defective is not one in this suit. It is the pleading by which was originated the proceeding before the Federal Trade Commission, an administrative tribunal, whose order this suit was brought to set aside. No suggestion was made in the proceeding before the Commission that the complaint was defective. No such objection was raised in this suit in the court below. It was not made here by counsel. The objection is taken now for the first time and by the court.

This suit, begun in the Circuit Court of Appeals for the Second Circuit, was brought to set aside an order of the Federal Trade Commission. Before the latter the matter involved was thoroughly tried on the merits. There was a complaint and answers. Thirty-five witnesses were examined and cross-examined. A report of proposed findings as to facts was submitted by the Examiner and exceptions were filed thereto. Then, the case was heard before the Commission, which made a finding of facts, stated its conclusions as to the law, and ultimately issued the order in question. The proceedings occupied more

than sixteen months. The report of them fills four hundred pages of the printed record. In my opinion it is our duty to determine whether the facts found by the Commission are sufficient in law to support the order; and, also, if it is questioned, whether the evidence was sufficient to support the findings of fact.

Second. If the sufficiency of the complaint is held to be open for consideration here, we should, in my opinion, hold it to be sufficient. The complaint was filed under § 5 of the Federal Trade Commission Act which declares unlawful "unfair methods of competition in commerce"; empowers the Commission to prevent their use; and directs it to issue and serve "a complaint stating its charges in that respect" whenever it has reason to believe that a concern "has been or is using" such methods. The function of the complaint is solely to advise the respondent of the charges made so that he may have due notice and full opportunity for a hearing thereon. It does not purport to set out the elements of a crime like an indictment or information, nor the elements of a cause of action like a declaration at law or a bill in equity. All that is requisite in a complaint before the Commission is that there be a plain statement of the thing claimed to be wrong so that the respondent may be put upon his defence. The practice of the Federal Trade Commission in this respect, as in many others, is modelled on that which has been pursued by the Interstate Commerce Commission for a generation and has been sanctioned by this as well as the lower federal courts. *United States Leather Co.* v. *Southern Ry. Co.*, 21 I. C. C. 323, 324; *Clinton Sugar Refining Co.* v. *C. & N. W. Ry. Co.*, 28 I. C. C. 364, 367; *Stuarts Draft Milling Co.* v. *Southern Ry. Co.*, 31 I. C. C. 623, 624; *New York Central, etc., R. R. Co.* v. *Interstate Commerce Commission*, 168 Fed. Rep. 131, 138–139; *Dickerson* v. *Louisville & Nashville R. R. Co.*, 187 Fed. Rep. 874, 878; *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162

U. S. 197, 215; *Cincinnati, Hamilton & Dayton Ry. Co.* v. *Interstate Commerce Commission*, 206 U. S. 142, 149.

The complaint here under consideration stated clearly that an unfair method of competition had been used by respondents, and specified what it was, namely, refusing to sell cotton ties unless the customer would purchase with each six ties also six yards of bagging. The complaint did not set out the circumstances which rendered this tying of bagging to ties an unfair practice. But this was not necessary. The complaint was similar in form to those filed with the Interstate Commerce Commission on complaints to enforce the prohibition of "unjust and unreasonable charges" or of "undue or unreasonable preference or advantage" which the Act to Regulate Commerce imposes. It is unnecessary to set forth why the rate specified was unjust or why the preference specified is undue or unreasonable, because these are matters not of law but of fact to be established by the evidence. *Pennsylvania Company* v. *United States*, 236 U. S. 351, 361. So far as appears neither this nor any other court has ever held that an order entered by the Interstate Commerce Commission may be set aside as void, because the complaint by which the proceeding was initiated, failed to set forth the reasons why the rate or the practice complained of was unjust or unreasonable; and I cannot see why a different rule should be applied to orders of the Federal Trade Commission issued under § 5.[1]

[1] See Report Senate Committee on Interstate Commerce, June 13, 1914, 63d Cong., 2d sess., No. 597, p. 13: "It is believed that the term 'unfair competition' has a legal significance which can be enforced by the commission and the courts, and that it is no more difficult to determine what is unfair competition than it is to determine what is a reasonable rate or what is an unjust discrimination. The committee was of the opinion that it would be better to put in a general provision condemning unfair competition than to attempt to define the numerous unfair practices, such as local price cutting, interlocking directorates, and holding companies intended to restrain substantial competition."

In considering whether the complaint is sufficient, it is necessary to bear in mind the nature of the proceeding under review. The proceeding is not punitive. The complaint is not made with a view to subjecting the respondents to any form of punishment. It is not remedial. The complaint is not filed with a view to affording compensation for any injury alleged to have resulted from the matter charged, nor with a view to protecting individuals from any such injury in the future. The proceeding is strictly a preventive measure taken in the interest of the general public. And what it is brought to prevent is not the commission of *acts* of unfair competition, but the pursuit of unfair *methods*. Furthermore, the order is not self-executory. Standing alone it is only informative and advisory. The Commission cannot enforce it. If not acquiesced in by the respondents the Commission may apply to the Circuit Court of Appeals to enforce it. But the Commission need not take such action; and it did not do so in respect to the order here in question. Respondents may, if they see fit, become the actors and ask to have the order set aside. That is what was done in the case at bar.

The proceeding is thus a novelty. It is a new device in administrative machinery, introduced by Congress in the year 1914, in the hope thereby of remedying conditions in business which a great majority of the American people regarded as menacing the general welfare, and which for more than a generation they had vainly attempted to remedy by the ordinary processes of law. It was believed that widespread and growing concentration in industry and commerce restrained trade and that monopolies were acquiring increasing control of business. Legislation designed to arrest the movement and to secure disintegration of existing combinations had been enacted by some of the States as early as 1889. In 1890 Congress passed the Sherman Law. It was followed by much

legislation in the States [1] and many official investigations. Between 1906 and 1913 reports were made by the Federal Bureau of Corporations of its investigations into the petroleum industry, the tobacco industry, the steel industry and the farm implement industry. A special committee of Congress investigated the affairs of the United States Steel Corporation. And in 1911 this court rendered its decision in *Standard Oil Co.* v. *United States*, 221 U. S. 1, and in *United States* v. *American Tobacco Co.*, 221 U. S. 106. The conviction became general in America, that the legislation of the past had been largely ineffective. There was general agreement that further legislation was desirable. But there was a clear division of opinion as to what its character should be. Many believed that concentration (called by its opponents monopoly) was inevitable and desirable; and these desired that concentration should be recognized by law and be regulated. Others believed that concentration was a source of evil; that existing combinations could be disintegrated, if only the judicial machinery were perfected; and that further concentration could be averted by providing additional remedies, and particularly through regulating competition. The latter view prevailed in the Sixty-third Congress.[2]

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[1] See Laws on Trusts and Monopolies. Compiled under direction of the Clerk of the House Committee on the Judiciary, 63d Cong., by Nathan B. Williams. Revised January 10, 1914; also Trust Laws and Unfair Competition (Federal) Bureau of Corporations, March 15, 1915.

[2] See Report of Senate Committee on Interstate Commerce, June 13, 1914, 63d Cong., 2d sess., No. 597, p. 10, reporting the bill:

"Some would found such a Commission upon the theory that monopolistic industry is the ultimate result of economic evolution and that it should be so recognized and declared to be vested with a public interest and as such regulated by a commission. This contemplates even the regulation of prices. Others hold that private monopoly is intolerable, unscientific, and abnormal, but recognize that a commission is a necessary adjunct to the preservation of competition and to the practical enforcement of the law. . . .

The Clayton Act (October 15, 1914, c. 323, 38 Stat. 730) was framed largely with a view to making more effective the remedies given by the Sherman Law. The Federal Trade Commission Act (September 26, 1914, c. 311, 38 Stat. 717) created an administrative tribunal, largely with a view to regulating competition.

Many of the duties imposed upon the Trade Commission had been theretofore performed by the Bureau of Corporations. That which was in essence new legislation was the power conferred by § 5. The belief was widespread that the great trusts had acquired their power, in the main, through destroying or overreaching their weaker rivals by resort to unfair practices.[1] As Standard Oil rebates led to the creation of the Interstate Commerce Commission,[2] other unfair methods of competition, which the investigations of the trusts had laid bare, led to the creation of the Federal Trade Commission. It was hoped that as the former had substantially eliminated rebates—the latter might put an end to all other unfair trade practices;—and that it might prove possible thereby to preserve the competitive system. It was a new experiment on old lines; and the machinery employed was substantially similar.

In undertaking to regulate competition through the Trade Commission Congress (besides resorting to administrative as distinguished from judicial machinery) departed in two important respects from the methods and measures theretofore applied in dealing with trusts and restraints of trade:

(1) Instead of attempting to inflict punishment for having done prohibited acts, instead of enjoining the

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"The commission which is proposed by your committee in the bill submitted is founded upon the latter purpose and idea."

[1] See "Unfair Competition," by William S. Stevens, Political Science Quarterly (1914), p. 283; "The Morals of Monopoly and Competition" (1916), by H. B. Reed.

[2] See Railway Problems, by William Z. Ripley (1907), p. X.

continuance of prohibited combinations and compelling disintegration of those formed in violation of law, the act undertook to preserve competition through supervisory action of the Commission. The potency of accomplished facts had already been demonstrated. The task of the Commission was to protect competitive business from *further* inroads by monopoly. It was to be ever vigilant. If it discovered that any business concern had used any practice which would be likely to result in public injury—because in its nature it would tend to aid or develop into a restraint of trade—the Commission was directed to intervene, before any act should be done or condition arise violative of the Anti-Trust Act. And it should do this by filing a complaint with a view to a thorough investigation; and, if need be, the issue of an order. Its action was to be prophylactic. Its purpose in respect to restraints of trade was prevention of diseased business conditions, not cure.[1]

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[1] Senator Cummins, chairman of the committee which reported the bill, said (Cong. Rec., vol. 51, p. 11455):

"Unfair competition must usually proceed to great lengths and be destructive of competition before it can be seized and denounced by the anti-trust law. In other cases it must be associated with, coupled with, other vicious and unlawful practices in order to bring the person or the corporation guilty of the practice within the scope of the anti-trust law. The purpose of this bill in this section and in other sections which I hope will be added to it, is to seize the offender before his ravages have gone to the length necessary in order to bring him within the law that we already have.

"We knew little of these things in 1890. The commerce of the United States has largely developed in the last twenty-five years. The modern methods of carrying on business have been discovered and put into operation in the last quarter of a century; and as we have gone on under the anti-trust law and under the decisions of the court in their effort to enforce that law, we have observed certain forms of industrial activity which ought to be prohibited whether in and of themselves they restrain trade or commerce or not. We have discovered that their tendency is evil; we have discovered that the end which is inevitably

(2) Instead of undertaking to define what practices should be deemed unfair, as had been done in earlier legislation, the act left the determination to the Commission.[1] Experience with existing laws had taught that definition, being necessarily rigid, would prove embarrassing and, if rigorously applied, might involve great hardship. Methods of competition which would be unfair in one industry, under certain circumstances, might, when adopted in another industry, or even in the same industry under different circumstances, be entirely unobjectionable.[2]

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reached through these methods is an end which is destructive of fair commerce between the states. It is these considerations which, in my judgment, have made it wise, if not necessary to supplement the anti-trust law by additional legislation, not in antagonism to the anti-trust law, but in harmony with the anti-trust law, to more effectively put into the industrial life of America the principle of the anti-trust law, which is fair, reasonable competition, independence to the individual, and disassociation among the corporations. . . ."

[1] See Report Senate Committee on Interstate Commerce, June 13, 1914, 63d Cong., 2d sess., No. 597, p. 13: "The committee gave careful consideration to the question as to whether it would attempt to define the many and variable unfair practices which prevail in commerce and to forbid their continuance or whether it would, by a general declaration condemning unfair practices, leave it to the commission to determine what practices were unfair. It concluded that the latter course would be the better. . . ." See also "Unfair Competition," by W. H. S. Stevens (University of Chicago Press, 1916), pp. 1, 2. For laws prohibiting specific acts of unfair competition, see "Trust Laws and Unfair Competition," (Federal) Bureau of Corporations (March 15, 1915), pp. 184, 199.

[2] Report of (Federal) Bureau of Corporations on the International Harvester Co., March 3, 1913, p. 30: "In discussing the competitive methods of the company it should be recognized that some practices which might be regarded with indifference if there were a number of competitors of substantially equal size and power may become objectionable when one competitor far outranks not only its nearest rival, but practically all rivals combined, as is true of the International Harvester Co., so far as several of its most important lines are concerned."

The Australian Industries Preservation Act, 1908–1910, expressly

Furthermore, an enumeration, however comprehensive, of existing methods of unfair competition must necessarily soon prove incomplete, as with new conditions constantly arising novel unfair methods would be devised and developed. In leaving to the Commission the determination of the question whether the method of competition pursued in a particular case was unfair, Congress followed the precedent which it had set a quarter of a century earlier, when by the Act to Regulate Commerce it conferred upon the Interstate Commerce Commission power to determine whether a preference or advantage given to a shipper or locality fell within the prohibition of an undue or unreasonable preference or advantage.[1] See *Pennsylvania Co.* v. *United States, supra,* p. 361; *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission,* 162 U. S. 197, 219, 220. Recognizing that the question whether a method of competitive practice was unfair would ordinarily depend upon special facts, Congress imposed upon the Commission the duty of finding the facts; and it declared that findings of fact so made (if duly supported by evidence) were to be taken as final. The question whether the method of competition pursued could, on those facts, reasonably be held by the Commission to constitute an unfair method of competition, being a question of law, was necessarily left open to review by the court. Compare *Interstate Commerce Commission* v. *Diffenbaugh,* 222 U. S. 42; *Interstate Commerce Commission* v. *Baltimore & Ohio R. R. Co.,* 145 U. S. 263.

Third. Such a question of law is presented to us for decision; and it is this: Can the refusal by a manufacturer to sell his product to a jobber or retailer except upon condition that the purchaser will buy from him also his

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declares that "unfair competition means competition which is unfair in the circumstances." "Trust Laws and Unfair Competition," (Federal) Bureau of Corporations (March 15, 1915), pp. 552, 747.

[1] See note 1, *ante,* 431.

trade requirements in another article or articles, reasonably be found by the Commission to be an unfair method of competition under the circumstances set forth in the findings of fact? If we were called upon to consider the sufficiency of the complaint, and that merely, the question for our decision would be, whether the particular practice could, under any circumstances, reasonably be deemed an unfair method of competition. But as this suit to set aside the order of the Commission brings before us its findings of fact, we must determine whether these are sufficient to support their conclusion of law that the practice constituted "under the circumstances therein set forth, unfair methods of competition in interstate commerce, against other manufacturers, dealers and distributors . . . in the material known as sugar bag cloth, and against manufacturers, dealers and distributors of the bagging known as rewoven bagging and second hand bagging, in violation of" the statute.

It is obvious that the imposition of such a condition is not necessarily and universally an unfair method; but that it may be such under some circumstances seems equally clear. Under the usual conditions of competitive trade the practice might be wholly unobjectionable. But the history of combinations has shown that what one may do with impunity, may have intolerable results when done by several in coöperation. Similarly, what approximately equal individual traders may do in honorable rivalry, may result in grave injustice and public injury, if done by a great corporation in a particular field of business which it is able to dominate. In other words, a method of competition fair among equals may be very unfair if applied where there is inequality of resources.[1] Without providing for those cases where the method of competition here involved would be unobjectionable,

[1] See "The Morals of Monopoly and Competition," by H. B. Reed (1916), pp. 120–122.

Massachusetts legislated against the practice, as early as 1901, by a statute (c. 478) of general application. Its highest court, in applying the law which it held to be constitutional, described the prohibited method as "unfair competition." *Commonwealth* v. *Strauss*, 188 Massachusetts, 229; 191 Massachusetts, 545. Compare *People* v. *Duke*, 44 N. Y. S. 336. The (Federal) Bureau of Corporations held the practice, which it described as "full-line forcing", to be highly reprehensible.[1] Congress, by § 3 of the Clayton Act, specifically prohibited the practice in a limited field under certain circumstances. An injunction against the practice has been included in several decrees in favor of the Government entered in cases under the Sherman Law.[2] In the decree by which the American Tobacco Company was disintegrated pursuant to the mandate of this court, each of the fourteen companies was enjoined from "refusing to sell to any jobber any brand of any tobacco product manufactured by it, except upon condition that such jobber shall purchase from the vendor some other brand or product also manufactured and sold by it. . . . " *United States* v. *American Tobacco Co.*, 191 Fed. Rep. 371, 429. The practice here in question is merely one form of the so-called "tying clauses" or "conditional requirements" which have been declared in a discerning study of the whole subject to be "perhaps the most interesting of any of the methods of unfair competition." [3]

The following facts found by the Commission, and which the Circuit Court of Appeals held were supported by sufficient evidence, show that the conditions in the

[1] Report of the (Federal) Bureau of Corporations on the International Harvester Company (March 3, 1913), p. 308.

[2] See "Unfair Methods of Competition and their Prevention," by W. H. S. Stevens, Annals, American Academy of Political and Social Science (1916), pp. 42, 43. "Trust Laws and Unfair Competition" (Federal) Bureau of Corporations (March 15, 1915), pp. 484–486, 493.

[3] "Unfair Competition," by W. H. S. Stevens (1916), p. 54.

cotton tie and bagging trade were in 1918 such that the Federal Trade Commission could reasonably find that the tying clause here in question was an unfair method of competition: Cotton, America's chief staple, is marketed in bales. To bale cotton steel ties and jute bagging are essential. The Carnegie Steel Company, a subsidiary of the United States Steel Corporation, manufactures so large a proportion of all such steel ties that it dominates the cotton tie situation in the United States and is able to fix and control the price of such ties throughout the country. The American Manufacturing Company manufactures about 45 per cent. of all bagging used for cotton baling; one other company about 20 per cent.; and the remaining 35 per cent. is made up of second-hand bagging and a material called sugar-bag cloth. Warren, Jones & Gratz, of St. Louis, are the Carnegie Company's sole agents for selling and distributing steel ties. They are also the American Manufacturing Company's sole agents for selling and distributing jute bagging in the cotton-growing section west of the Mississippi. By virtue of their selling agency for the Carnegie Company, Warren, Jones & Gratz held a dominating and controlling position in the sale and distribution of cotton ties in the entire cotton-growing section of the country, and thereby were in a position to force would-be purchasers of ties to also buy from them bagging manufactured by the American Manufacturing Company. A great many merchants, jobbers and dealers in bagging and ties throughout the cotton-growing States were many times unable to procure ties from any other firm than Warren, Jones & Gratz. In many instances Warren, Jones & Gratz refused to sell ties unless the purchaser would also buy from them a corresponding amount of bagging, and such purchasers were oftentimes compelled to buy from them bagging manufactured by the American Manufacturing Company in order to procure a sufficient supply of steel ties.

These are conditions closely resembling those under which "full-line forcing," "exclusive-dealing requirements" or "shutting off materials, supplies or machines from competitors"—well known methods of competition, have been held to be unfair, when practiced by concerns holding a preponderant position in the trade.[1]

Fourth. The Circuit Court of Appeals set aside the order of the Commission solely on the ground that it was without authority to determine the merits of specific individual grievances, and that the evidence did not support its finding that Warren, Jones & Gratz had "adopted and practiced the policy of refusing to sell steel ties to those merchants and dealers who wished to buy them from them unless such merchants and dealers would also buy from them a corresponding amount of jute bagging."

The reason assigned by the Circuit Court of Appeals for so holding was that the evidence failed to show that the practice complained of (although acted on in individual cases by respondents) had become their "general practice." But the power of the Trade Commission to prohibit an unfair method of competition found to have been used is not limited to cases where the practice had become general. What § 5 declares unlawful is not unfair competition. That had been unlawful before. What that section made unlawful were "unfair *methods* of competition"; that is, the method or means by which an unfair end might be accomplished. The Commission was directed to act, if it had reason to believe that an "unfair method of competition in commerce" has been or is being used. The purpose of Congress was to prevent any unfair method which may have been used by any concern in competition from becoming its general practice. It was only by stopping its use before it became a general prac-

[1] See "Trust Laws and Unfair Competition," (Federal) Bureau of Corporations (March 15, 1915), pp. 319–323, 328.

tice, that the apprehended effect of an unfair method in suppressing competition by destroying rivals could be averted. As the Circuit Court of Appeals found that the evidence was sufficient to support the facts set forth above, and since on those facts the Commission could reasonably hold that the method of competition in question was unfair under the circumstances, it had power under the act to issue the order complained of.

In my opinion the judgment of the Circuit Court of Appeals should be reversed.